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Canada. Capital and Corporal Punishment and
Lotteries; Joint Committee of the Senate and
the House of Commons on,

FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54



Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden
and

Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 17

TUESDAY, JUNE 1, 1954
WEDNESDAY, JUNE 2, 1954

WITNESS:

Professor Thorsten Sellin, Chairman, Department of Sociology,
University of Pennsylvania.

Appendix: Prepared Statement on Abolition of Capital
Punishment, with Diagrammatic Graphs I—VII,
of Professor Thorsten Sellin.

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Hon. Paul Henri Bouffard
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Hon. Muriel McQueen Fergusson

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Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. Small,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

MORNING SITTING

TUESDAY, JUNE 1, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.30 a.m. The Joint Chairman, Mr. Don F. Brown, presided.

Present:

The Senate: The Honourable Senators Aseltine, Fergusson, Hodges and Veniot.—(4)

The House of Commons: Messrs. Boisvert, Brown (*Essex West*), Cameron (*High Park*), Fairey, Fulton, Mitchell (*London*), Shaw, Shipley (Mrs.), and Thatcher.—(9)

In attendance: Professor Thorsten Sellin, Chairman, Department of Sociology, University of Pennsylvania, Philadelphia; Mr. D. G. Blair, Counsel to the Committee.

On motion of the Honourable Senator Hodges, seconded by Mrs. Shipley, the Honourable Senator Muriel McQueen Fergusson was elected to act for the day on behalf of the Joint Chairman representing the Senate due to his unavoidable absence.

The Presiding Chairman called on Counsel to the Committee to introduce Professor Sellin.

Professor Sellin presented his prepared statement on abolition of capital punishment, copies of which had been circulated in advance to members of the committee. During his commentaries on his statement on capital punishment, Professor Sellin referred to seven graphs illustrating Homicide Death Rates and Executions in certain of the United States of America, (Diagrams I to VII inclusive), which were ordered to be printed, together with his prepared statement on capital punishment, as an Appendix.

At the conclusion of Professor Sellin's oral remarks on capital punishment, the Committee continued its proceedings *in camera*.

At 1.15 p.m., the Committee adjourned until 4.00 p.m.

AFTERNOON SITTING

The Committee resumed its proceedings at 4.00 p.m. The Joint Chairman, Mr. Don F. Brown, presided.

Present:

The Senate: The Honourable Senators Aseltine, Beauregard, Fergusson, and Veniot.—(4)

The House of Commons: Messrs. Boisvert, Brown (*Essex West*), Cameron (*High Park*), Fulton, Mitchell (*London*), Shipley (Mrs.), Thatcher, and Winch.—(8)

JOINT COMMITTEE

In attendance: Professor Thorsten Sellin, Chairman, Department of Sociology, University of Pennsylvania, Philadelphia; Mr. D. G. Blair, Counsel to the Committee.

The Committee commenced its questioning of Professor Sellin in respect of his presentation to the Committee on the abolition of capital punishment.

During the course of its questioning period, it was agreed that Professor Sellin would gather further information and statistics with respect to capital punishment for submission to the Committee.

At 5.50 p.m., the Committee's proceedings were interrupted by a Division in the House of Commons.

The Committee adjourned to meet again at 11.30 a.m., Wednesday, June 2, 1954.

MORNING SITTING

WEDNESDAY, June 2, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.30 a.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Aseltine, Fergusson, Hodges, and Veniot.—(4)

The House of Commons: Miss Bennett, Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Fairey, Fulton, Mitchell (*London*), Shaw, Shipley (*Mrs.*), Valois, and Winch.—(12)

In attendance: Professor Thorsten Sellin, Chairman, Department of Sociology, University of Pennsylvania, Philadelphia; Mr. D. G. Blair, Counsel to the Committee.

On motion of the Honourable Senator Fergusson, seconded by Miss Bennett, the Honourable Senator Nancy Hodges was elected to act for the day on behalf of the Joint Chairman representing the Senate due to his unavoidable absence.

The Committee resumed its questioning of Professor Sellin in respect of his presentation to the Committee on the abolition of capital punishment.

At 1.05 p.m., the Committee continued its proceedings *in camera*.

At 1.15 p.m., the Committee adjourned until 4.00 p.m.

AFTERNOON SITTING

The Committee resumed its proceedings at 4.00 p.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Aseltine, Fergusson, Hodges, and Veniot.—(4)

The House of Commons: Miss Bennett, Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Fairey, Shaw, Shipley (*Mrs.*), Thatcher, Valois, and Winch.—(11)

In attendance: Professor Thorsten Sellin, Chairman, Department of Sociology, University of Pennsylvania, Philadelphia; Mr. D. G. Blair, Counsel to the Committee.

The Committee resumed and completed its questioning of Professor Sellin in respect of his presentation to the Committee on the abolition of capital punishment.

Professor Sellin also presented and read a prepared statement on abolition of corporal punishment, copies of which had been circulated in advance to members of the Committee, and was questioned thereon.

On behalf of the Committee, the Acting Joint Chairman and the Presiding Chairman each expressed the Committee's appreciation and thanked the witness for his presentations.

The witness retired.

At 5.40 p.m., the Committee adjourned to the call of the Chair.

A. SMALL,
Clerk of the Committee.

EVIDENCE

TUESDAY, June 1, 1954,
11.30 a.m.

The PRESIDING CHAIRMAN (Mr. Brown, Essex West): We will please come to order. A motion will now be entertained to elect a co-chairman for the day from the Senate.

Hon. Mrs. HODGES: I would like to move that Senator Fergusson take the chair.

The PRESIDING CHAIRMAN: Moved by Senator Hodges and seconded by Mrs. Shipley that the Honourable Mrs. Fergusson assume the chair for the day. Carried.

(Hon. Mrs. Fergusson assumed the chair as co-chairman.)

The PRESIDING CHAIRMAN: I think we should tell you what the schedule is: we will sit until 1.00 o'clock, and if it is your pleasure we will meet again at 4 o'clock this afternoon in this room, and tomorrow again at 11.30. There will be no meeting tomorrow afternoon. In fact, this will be the last witness we shall have at this session.

Hon. Mrs. HODGES: There will be no other meetings afterwards?

The PRESIDING CHAIRMAN: Yes.

Hon. Mrs. HODGES: There will be meetings, but no other witnesses?

The PRESIDING CHAIRMAN: That is right.

Hon. Mr. ASELTINE: Will there be an interim report?

The PRESIDING CHAIRMAN: Yes, and we shall have to meet for the purpose of drafting that report.

I am going to call upon Mr. Blair to introduce our distinguished guest for today.

Mr. BLAIR: Madam Chairman, Mr. Chairman, and members of the committee: We have with us today Professor Thorsten Sellin of the University of Pennsylvania. His accomplishments are so many and he is so modest that I think it is necessary for me to put on the record his qualifications to speak to you today.

Professor Sellin has been associated with the University of Pennsylvania since 1921; since 1930 he has been Professor of Sociology, and for the past ten years he has been chairman of the Department of Sociology. During this time he has taught criminology almost exclusively in his academic courses. In his long term of service with the University of Pennsylvania he has taken a considerable amount of time off devoting it to public service, both in the United States and in foreign countries.

In the years 1930 to 1933 he was consultant at the Bureau of Social Hygiene in New York, concerned mainly with studies of penal treatment. In 1946-1947 he was consultant to the Commission studying revision of the Swedish Penal Code, and at the same time acted as visiting professor of criminology in various Swedish universities.

In 1949 he was elected Secretary-General of the International Penal and Penitentiary Commission with its head office in Berne, Switzerland. This was an inter-governmental body devoted to the study of penology, and he held this position for a period of 20 months when the work of this old international organization was taken over by the United Nations. He has worked with

various United Nations committees in the past five years, three in particular having to do with the establishment of plans and procedure for the penal studies of the United Nations. Last year he was chairman of a United Nations committee drafting plans for a world congress on penology to be held in Geneva in 1955.

During this time he has acted as an American representative and correspondent to various United Nations bodies concerned with the question of penology and has attended, as observer for the American government, regional meetings in Europe and in South America under the aegis of the United Nations.

In his own country, he was a member of the advisory committee of the American Law Institute which drafted the Model Youth Correction Act, and he is at the present time a member of another advisory committee of the American Law Institute drafting a model penal code. This summer Professor Sellin is going to California on behalf of the Institute to study the work of the adult and youth correction authorities in that state.

Since 1929, he has been editor of the Annals of the American Academy of Political and Social Science; there have been frequent references in this committee recently to two volumes of the Annals, one in 1952, having to do with capital punishment, and another in 1950, on the question of gambling. Professor Sellin, in addition, has published many books and articles on criminological subjects. I have great pleasure in asking Professor Sellin to address the committee.

Professor Thorsten Sellin, Chairman, Sociology Department, University of Pennsylvania, called:

The WITNESS: Ladies and gentlemen, it is a great pleasure for me to be in Canada, a country with which I have very early connections from over 40 years ago when my family immigrated to Canada and our ship steamed up the St. Lawrence River and landed in Quebec and we stepped on an immigrant train to travel farther west.

I have presented to you a statement on the death penalty (*see Appendix*) which I hope will furnish a substantial basis for the questions you may wish to address to me on the subject. It might be wise, however, to go through the statement in part, at least, and point to some of the data found in it, especially as I have asked the secretary of the committee to have some photostats made of certain diagrams contained in my memorandum to the Royal Commission on Capital Punishment.

The PRESIDING CHAIRMAN: Could I interrupt you at this point, Professor? We have photostatic copies of the charts which I am going to distribute (*See Diagrams I to VII at end of Appendix*). There are not enough copies to go around and I have to ask members to share the copies that are presented. Thank you very much.

The WITNESS: As you will note, there are a great many countries which have abolished the death penalty. They are mostly in Europe and the Americas. It is a curious fact that among the nations of western culture, where the trend toward abolition has been the most apparent, the English speaking countries seem to be most attached to this penalty.

There is no ready answer for this distribution of countries with and without the death penalty because if we compare them we find that in both classes, countries with or without the death penalty, there are nations with the same level of civilization, the same religion, the same kind of population, the same form of government, the same sense of justice and morality, and the same rate of homicides. If you study Table I (*see appendix*) in my statements,

you will observe that in both columns there are countries with greatly different rates of homicide. The table is not presented with any idea that any conclusions can be drawn from it as to whether the death penalty is good or bad. I prepared the table purely for the purpose of showing you that the level of the homicide rate apparently is not a necessary determinant in the decision to keep or not to keep the death penalty. Here we have El Salvador, a death penalty you find Colombia and Puerto Rico with 16 and 14 respectively per and Wales at the bottom with a rate of .5. In countries without the death penalty you find Columbia and Puerto Rico with 16 and 14 respectively per 100,000 population, and the Netherlands at the bottom with even a lower homicide rate than that of England and Wales, .4. The table does not contain a complete list of the countries with or without the death penalty for the simple reason that the Demographic Year Book of the United Nations from which I have taken these figures did not give mortality statistics from all countries. Some countries are evidently not in a position to report these rates; perhaps they have not established them.

The PRESIDING CHAIRMAN: Would you like to read the brief?

The WITNESS: I think that would probably be tiresome to the committee. Some of the members have no doubt read it.

No matter what arguments are used for the retention or abolition of the death penalty, if we look at the history of punishments we find that the arguments have not been changed much in the last couple of hundred years: objectively they have not changed much, but their content has undergone considerable change. It is obvious that we do not feel the same today as people did a couple of hundred years ago about some of the forms of capital punishment nor about the crimes for which this punishment should be imposed. We have removed the death penalty from most of the offences earlier punishable by death, and we have changed greatly the way of imposing the death penalty. We no longer believe in public punishments, for instance. We no longer believe in putting people to death in a cruel or brutal or torturing manner; that was once regarded as absolutely necessary and proper. Now we hide the executions in the privacy of a prison yard or a prison chamber and do everything we can to make the execution rapid and painless. As a matter of fact we give little publicity to an execution. It is very difficult sometimes to discover in the newspapers that an execution has occurred. The notice is often buried somewhere on an inside page.

It is evident from these facts that while a sense of justice and high moral concepts are constant in man, because they are necessary to all social life, the ideas of what is just and moral have changed. It does not seem, therefore, that the existence of the death penalty rests upon any immutable principle. We have changed our ideas about it, and a great many countries have even abolished it. It would be presumptuous to assume that a country that possesses the death penalty has higher moral standards or a keener sense of justice than countries that do not have that penalty, because if you will look at the list of countries that do or do not have it you find in both of them countries leading in civilization.

In my statement, I referred in passing, to the fact that it is difficult to say why the abolition movement has been so strong during the last century, shall I say. It would appear to me that we have two factors operating. We have on the one hand the democratic philosophy which we find rooted in the thinking of the 18th century, the century of enlightenment, and best expressed, in so far as the penal law is concerned, in the great essay on crimes and punishments which Cesare Beccaria published in 1764. He voiced the beliefs of the philosophers that punishment should be equal, that all men before the law should receive the same punishment for the same crime. His aim was both

to humanize and democratize the criminal law. Beccaria was not in favour of the death penalty and his influence was great in his day. As a matter of fact, some of the earliest moves to abolish the death penalty came as a result of his writings.

On the other hand, the 19th century saw great progress in the behaviour sciences. Psychiatrists and others who began to study the criminal clinically gradually came to the conclusion that the concept of political equality, which assumed that all who committed a given crime should be subjected to the same punishment, did not afford a logical basis for the treatment of criminal behaviour. These scientists did not look on the criminal as a kind of undistinguishable unit in a democratic state, but as an individual person, different from other individuals—unique, in a sense—whose conduct was influenced by a multiplicity of factors. Instead of equality of punishment, they demanded a differentiation of punishment depending upon the characteristics of the offender and his needs, and aimed at removing the cause of his crime. I think that the roots of the abolition of the death penalty are, in part, found in these behaviour sciences that stress therapy, cure, treatment, because they are clinical in their approach. The older traditions of law clashed, of course, with these more modern ideas.

The influence of the behaviour sciences has been tremendous in the last century. It is largely to them that we owe such innovations as the indeterminate sentence, parole, and the juvenile court, and other modern developments in the penal law, designed to individualization of treatment rather than punishment by formula, so to speak.

Now, with regard to the arguments for and against the death penalty, some are dogmatic in character, and I do not propose to deal with them particularly because they are based on belief in other things than the utilitarian results or effects of the death penalty. These latter arguments about the death penalty are presumably based on experience rather than on faith. They claim that the death penalty has certain effects that can be measured or evaluated in some way. I have listed a few of those in my statement.

The first and most important, no doubt, is the argument about the specific deterrent effect of the death penalty; I shall speak only about murder in this connection. By "specific deterrent", I mean that no other punishment would be equally forceful in securing this effect. In arguments about the death penalty, we have to keep in mind that we are not arguing about the death penalty as opposed to no penalty, but as opposed to some other penalty, such as life imprisonment. If the death penalty is a specific deterrent to murder, it should be less frequent in states that have it than in those that have abolished it, other factors being equal. That "other factors being equal" is most important. I often see in statements about the death penalty, especially in the United States, comparisons of murder or homicide rates in states with and states without the death penalty, and I find, of course, that on that basis states without a death penalty have very much lower homicide rates because there is no attempt to equate these other factors. The southern states for instance, have the highest homicide rates and all have the death penalty, while, on the other hand, the ones that do not have the death penalty are, as you know, close to Canada, all northern states and with economic and social conditions quite different from those in the southern part of the country. Therefore, it is not permissible to compare, without any further qualifications, all states with and all states that are as alike as possible in all social and economic respects and have about the same type of population and the same amount of urbanization, one state not having the death penalty and the other state having it, a comparison between these states would enable us to come to better conclusions as to the relationship between homicide rates and the death penalty. That is the type of comparison that I shall make.

Another argument would be that, if the death penalty is a specific deterrent to murder, murders should increase when the penalty is abolished and they should decrease when the death penalty is re-established. Furthermore, if we assume that the death penalty does have a deterrent effect, that effect should show itself most strongly in communities from which persons who are executed come, where the crime was known, the trial received great publicity and the person executed has a certain acquaintanceship, friends and relatives perhaps, and the community itself is, more than other communities, keenly aware of the fact that the death penalty is actually being used. But before discussing that, we have to determine what element in the death penalty is supposed to have a deterrent effect. Belgium, for instance, has never abolished the death penalty, but since 1863 Belgium has never used the death penalty in times of peace. Every sentence to death—and sentences to death are being passed in Belgium every year—is automatically commuted to life imprisonment. If that is a known policy, I suppose the fact that the death penalty is found in a statute alone cannot be regarded as giving it any element of deterrent. Furthermore, there is many a slip between the cup and the lip in the use of the death penalty. Even where persons are charged with murder, they may not be sentenced to death, and if they are so sentenced, they may not be executed. There we have the whole problem of the administration of justice, including the policy of reprieves. A mere sentence to death, therefore, even in a country which uses the death penalty, presumably cannot have the same deterrent effect as an execution. I assume that it is the execution which has the greatest deterrent effect. Therefore, in studying the specific deterrence of the death penalty for murder, we ought to study executions and the relation of executions to homicide rates.

I discuss in my statement (see Appendix) the difficulties involved in arriving at any idea as to the number of murders. The general conclusion of those who have studied statistics is that the data on homicides, while they are not perfect by any means, reflect best the murder rate on the assumption that among, shall we say, 100 homicides regularly from year to year the percentage of murder remains the same. One can argue about the correctness of this assumption, but all I can say is that whether you defend the death penalty or whether you oppose it, these are the data on which arguments on either side are usually based.

The diagrams, to which your chairman referred, are before you, and I would like to call your attention to several of them (See end of Appendix). In diagram I are shown the Homicide Death Rates and Executions in Maine, New Hampshire and Vermont. You have here three states that, as you undoubtedly know, are reasonably similar in character. They are contiguous. All three lie along your border to the south. Culturally, there is great similarity among these states. One of the states, Maine, does not have the death penalty. The other two have it. They are all small states. I do not recall exactly the population, but my recollection is that New Hampshire does not have more than about 850,000 or 900,000 people. Therefore, homicides would be relatively few in number. But, if you did not know that Maine did not have the death penalty, would you be able to pick out the state without the death penalty from this diagram? I have tried this out on a great many of my classes of students and found them completely unable to identify the abolitionist states.

The PRESIDING CHAIRMAN: At this point, may I interrupt you, Professor?

The WITNESS: Yes.

The PRESIDING CHAIRMAN: These charts would not ordinarily appear in the records of our proceedings. Is it your pleasure that they be appended as part of the record?

Agreed. (See end of Appendix).

Mr. BLAIR: Is the homicide rate expressed in percentages?

The WITNESS: Those are not percentages; they are the number per 100,000 population. We would call that the crude rate because there is no account taken of differences in sex or age distribution in population. I regret the necessity for having to present such crude rates. In Maine, New Hampshire, and Vermont, and in the other states, it probably does not make very much difference because the ratios of the sexes and the age groups are probably rather similar. It would become important, however, if one were to compare states one of which has a very high proportion of male adult population compared with another that has a small proportion of adult population because homicide rates are heavily dependent upon these differences. Homicides are, for instance, not committed by children, and if in one state the proportion of children under 15 is much smaller than in another state that would have an important distorting influence on the crude rates.

Hon. Mrs. HODGES: May I ask a question here? This does not make it very clear. For instance, it says homicide death rates and executions in Maine.

The WITNESS: In Maine, New Hampshire and Vermont.

Hon. Mrs. HODGES: You say there is no death penalty in Maine.

The WITNESS: Yes, and therefore there are no executions in Maine.

Hon. Mrs. HODGES: I do not quite understand the Maine line. That is the percentage of homicides?

The WITNESS: That is the rate of homicides per 100,000 population in Maine.

Hon. Mrs. HODGES: Are the others the rates of executions or homicide?

The WITNESS: They are all homicide death rates. You will notice in the Vermont figure under the dotted line in 1932 there is a number 1.

Hon. Mrs. HODGES: I see.

The WITNESS: There was one execution that year in Vermont and you will notice also in 1947 a number 1 under the dotted line; there was one execution that year. In New Hampshire there was one execution—that is the broken line—in 1939; that was the first one in 17 years.

Hon. Mrs. HODGES: Thank you. It was not clear otherwise.

The WITNESS: Now then, we come to Rhode Island, Massachusetts and Connecticut (Diagram II). Here we have again one state, Rhode Island—that is the solid line—which does not have the death penalty, while Massachusetts and Connecticut have the death penalty. Again, when you notice the homicide rates per 100,000 population they seem to fluctuate approximately the same in these states. It is impossible, in other words, to distinguish from among these three states, by any inspection of this diagram, the state which does not have the death penalty.

Diagram III shows the homicide death rates in Michigan, Indiana, and Ohio. The Michigan homicide death rate is the solid line. In 1926, you notice that it rises higher than the others, but afterwards it drops and runs most of the time below the other two. The interesting thing about this diagram, however, is a downward trend which you have noted undoubtedly in the other two diagrams—not so much in the first one, but it is noticeable in the second and you will also see it in the following ones.

Mr. THATCHER: Which state has not the death penalty in this chart?

The WITNESS: Michigan. Both in this and following charts you will notice the higher rate in the middle twenties, but generally speaking, it declines to 1948, I regret that the diagrams stop at that year, but the time at my disposal for preparing this statement has not been long enough in connection with my

other duties to be able to secure some of the later figures and prepare new drawings. You will notice that the trend has been downward, whether the state used the death penalty or not.

In diagram IV we have Minnesota, Iowa and Wisconsin. Minnesota and Wisconsin do not have the death penalty while Iowa has it. Again, you will notice, except in the early twenties, the first half of the decade after the war the rate was higher in Minnesota, but later on the three curves run along together and again the general trend is downward.

In Diagram V are found the homicide death rates in North Dakota, South Dakota, and Nebraska. South Dakota introduced the death penalty again in 1939. Nebraska has always had this penalty. North Dakota abolished the death penalty in 1915. South Dakota is the broken line. One might be tempted to assume that the introduction of the death penalty in South Dakota was the cause of the fall of the homicide rate down to 1940 and 1941, but if one looks at 1934 and notices the peak in South Dakota at that time and the sudden drop to almost nothing in 1937, one has to conclude that we have a coincidence here. The first execution did not occur until 1947 and in 1948 the homicide rate doubled. North Dakota has a generally low rate, compared with the others, but I am not suggesting that this is due to the absence of capital punishment, I am not presenting these diagrams for any other purpose than to show the similarity in the general level and range of the homicide rates, and similarly the trends.

In Diagram VI we have the same data for Colorado, Missouri and Kansas. Kansas introduced the death penalty in 1935 but had no execution until 1943. The other states had it during the entire period for which this diagram was drawn. Kansas is the bottom curve. You will notice that the drop in the homicide rate had already started early in 1921; there was a rise in 1931; and then again a drop occurred which continued down to 1940 after which the rate stabilized more or less. Practically speaking, the three have the same trend, responsive evidently to the social and economic conditions of these states.

The last diagram (Diagram VII) that I am showing you, shows the homicide death rate in four southern states. All of them have always had the death penalty and exercise it. You notice here again in a broad way the same downward trend, except in North Carolina, which seems to have had a rather stable homicide rate since 1925. The other three states follow the same general trends as those already shown.

The conclusion to which one comes in looking at these diagrams, it seems to me, would be that it is impossible to discover any relationship between the executions and the homicide rates. Whether the state has the death penalty and uses it or does not have it, the homicide rates show the same general trends over a period of time. Therefore, the death penalty certainly cannot be regarded as a specific deterrent for murder. I quote from the Minister of Justice in New Zealand. In 1950, you will recall, he argued for the re-introduction of the death penalty in New Zealand and said that he was satisfied that the statistics of murder "Neither prove nor disprove the case for capital punishment, and therefore they neither prove nor disprove the case against it." This is correct if it means that such statistics have little to do with a people's like or dislike for this penalty, but it is incorrect if it means that statistics prove nothing. What the statistics prove is not the case for or against the death penalty, but the case against the general deterrent effect of that penalty.

For my memorandum to the Royal Commission on Capital Punishment I examined data from a considerable number of foreign states that once experimented with abolition as well as data from certain American states that had temporarily abandoned the death penalty, and those of you who have had an opportunity to read the three case histories in the Annals volume

on Murder and the Penalty of Death covering Oregon, Washington and Missouri, will note what I observed in my survey that the re-introduction of the death penalty was not generally due to any special increase in the murder rate. In some cases there seemed to be an increase; in others a decrease. There was often some political problem involved, some peculiar, though temporary situation. It is interesting to note that four American states abolished the death penalty in 1913, 1914, 1915 and 1917 and re-introduced it in 1919 and 1920 during the demobilization period just after the first World War. We know that this is always a difficult period both economically and socially and I suspect very strongly that where there was an increase in homicides it was associated with the peculiar problems of demobilization. When one studies the homicide rates of these American states that re-introduced the death penalty one finds that the rates continued upward later on and reached those peaks in the middle twenties that you have seen in diagrams I to VII.

There is one interesting illustration that I might cite in connection with Italy. Italy used to be known for a high homicide rate; and on page 650 of my memorandum to the Royal Commission I reported on a study made by the former head of the bureau of criminal statistics of Italy, Dr. Alfredo Spallanzani, of the homicide rates in Italy covering a period from 1891 down to 1947. Now, Italy had no death penalty between 1889 and 1929 when the Mussoli government re-introduced it. The new constitution of Italy of 1948 abolished the death penalty. But, if we look at the homicide rates in Italy—and in this case the rate is based upon homicides ascertained by the investigation authorities, that is the examining magistrates and the judicial police and not general homicide rates of the type displayed in the diagrams—we find that from 1881-1885 down to 1929, there was a general drop in the rates. In other words, the decline had started before the abolition of the death penalty, continued during the abolition of the death penalty, continued after the re-introduction of the death penalty until 1941, when it reached the low point of 1·8 per 100,000 as compared with 14·2 per 100,000 population during the period 1881-1885. Since that time, however, the rate has risen. In 1945 the index figure was the highest it had ever been. This index to which I am referring uses as a base figure of 100 the homicide rate for the 1881-1885 period, the rates of later quinquennia and years being expressed as percentages of the base figure of 100, in 1944 that index was 49 as compared with 100 in 1881-1885, and it rose in 1945 to 115. In the next two years, which are the last years covered by the study, it dropped to 78.

The PRESIDING CHAIRMAN: This chart does not show the rate per thousand?

The WITNESS: No, it is the rate per 100,000 population. It does not show the rate after 1941, because this study was published in 1949 and presumably the population figures were not available so as to make it possible to compute the rate, but one can see that there was a tremendous increase in the homicides as obtained by the investigating authorities in 1945. Then it dropped again, and in 1948 the death penalty was abolished again by the Italian government. I assume that the rate has continued to decline, because social conditions in Italy have become more and more settled since 1947; that high rate of 1945 is obviously a postwar phenomenon. This was a terribly difficult year in Italy and that accounts, no doubt, for the great rise.

Mr. BLAIR: I wonder, if it would meet the wishes of the committee to have this table, about which Professor Sellin has been speaking, reproduced from the British testimony and put on the record here.

The PRESIDING CHAIRMAN: Is it agreed?

Carried.

HOMICIDES ASCERTAINED BY THE INVESTIGATING AUTHORITIES*
(UFFICI D'ISTRUZIONE) IN ITALY 1881-1947

Years	Annual Average	Index	Rate per 100,000 population
1881-85	4,441	100	14.2
1886-90	3,831	86	
1891-95	3,474	78	11.3
1896-1900	3,191	72	
1901-05	2,687	61	8.3
1906-10	2,603	59	
1911-15	2,476	54	7.0
1916-20	1,857	42	
1921-25	2,726	62	7.2
1926-30	1,067	33	
1931-35	1,920	43	4.7
1936-40	1,377	39	3.2
1941	830	19	1.8
1942	783	17	
1943	1,018	25	
1944	2,249	49	
1945	5,107	115	
1946	3,436	78	
1947	3,451	78	

* Alfredo Spallanzani: 'Notizie statistiche sugli omicidi volontari commessi in Italia dal 1881 al 1947'. La Giustizia Penale 54, pt. 1: cols. 257-268, Sept. 1949.

The WITNESS: I can go through the rest of my statement very rapidly, because I do not think that there is much in it that needs to be stressed. I refer briefly to errors of justice. I notice that the claim has been made before your committee that, so far as you have discovered in Canada, no one who was innocent has been executed. Obviously I would be the last person to challenge any such statement. I can only say that in other countries experience indicates that there have been persons executed who were later on found to be innocent. Others have been saved from execution by a twist of fate, one might say, and were later found to be innocent. We would probably, if one were to search very carefully in our American literature, locate quite a large number of cases where there has been serious doubt as to the guilt of the offender, perhaps sometimes technical guilt, and yet executions have occurred. I closed that part of my statement by saying that some might argue that such errors are human and unintentional, and that by and large they are outweighed by the great service to society which the death penalty is presumed to have in deterring others. This would seem to be the only possible argument, since those who defend the death penalty only because it is a just or well-deserved retribution for crime, or atonement for taking a human life, could hardly tolerate or defend the execution of innocent people—if justice or atonement were the only real reasons for an execution. But, if there is no way of proving deterrent effect of the death penalty on others, the execution of a single innocent person becomes indefensible. It is an irreparable punishment.

The third section of my statement was put in because it presents one of the oddities of capital punishment, the death penalty as a stimulant to murder. I thought you might be interested in it, simply because it is usually not referred to in debates about this punishment. It is difficult to find cases of it at the present time, but they seem to have been at one time common enough to merit attention. It is, no doubt, true that today such persons would be regarded as mentally disordered and would be taken care of in other ways

than by punishment; they would be committed to mental hospitals, for instance. Regardless of the twisted manner in which their minds may operate at the moment, if they hope that murder would be a desirous way of committing suicide, the death penalty would have been the stimulant and cause of murder.

Lastly, I took up briefly the problem of the protection of society by means of life imprisonment. Does the life sentence furnish adequate protection against murder? I refer you to Table II of my statement, in which you will notice certain facts about the time served by persons who were paroled or pardoned or who were released in other ways, those who died in prison, and whether or not they were first-degree commitments or second-degree commitments.

By Mr. Fulton:

Q. Mr. Chairman, may I ask the professor if he would please explain the table? I cannot understand or appreciate the reason why there are two columns under "Died", each headed "No".—A. That is the number of cases. "ATS" is the "average time served", in other words how long they had served.

Q. Why are there two columns showing the numbers who had been committed for first-degree murder?—A. There is only one column showing the number. The other is second degree.

Q. Underneath "First Degree" you have "Died", and you have two columns, each headed "No", which I presume means "number". The figure in each column is not the same.—A. No, under first-degree commitments, the first column that says "number" gives the total; in the following three main columns, each is divided into two columns giving the actual number and the average time that they had served when they were released, either by death or some other manner.

Q. I think there is an error in the reproduction of the table in the mimeographed copies that we have. There should be a vertical line between the first column and the second, and that should extend from the horizontal line under "First Degree Commitments" to the bottom of the table. That is omitted in our copies.—A. I have only my own copy. I did not see the mimeographed copy.

I do not know that there is much to say about this table. One might assume that Connecticut and Massachusetts, which had a mandatory death penalty at that time, would offer some peculiarities. In Connecticut, for instance, there were 58 persons released from prisons during this period of 1926-1937 having originally been committed to prison for murder. Eight left by execution. One was either paroled or pardoned, after 25 years. On the other hand, 49 of those released had been originally sentenced for murder in the second degree, carrying a life sentence.

Hon. Mrs. HODGES: In Pennsylvania, we take it that the average term served there for first-degree commitments was only five years?

The WITNESS: If the person died. That is the actual length of a life sentence, because a life sentence is terminated by death, whether it is the first day after a person arrives in prison or the twenty-fifth year. Those that actually completed their life sentence therefore, had served an average of 5.2 years in Pennsylvania (41 cases); 8.9 years in New Jersey (7 cases); 8.1 years in California (89 cases); 10.4 years in Kansas (21 cases); and 8.2 years in Michigan (52 cases). It is more interesting to notice those who were paroled or pardoned, because those are the ones you would be likely to be more concerned with. The average time served by those referred to as "other releases", due to court orders, transfers to mental institutions, etc., was extremely short except in Kansas. In the two states that had a mandatory death penalty, Connecticut and Massachusetts, most of those convicted of first

degree murder were executed, and only the few whose sentences were commuted could be released. In the one such case in Connecticut the prisoner had spent 25 years in prison, and in Massachusetts there were two cases that averaged 25½ years. In states that did not have the death penalty (Kansas and Michigan), you will notice that there was a shorter period; but note that in Michigan, which does not have the death penalty on first-degree commitments, those pardoned or paroled had served on the average 13·8 years. This was somewhat higher than the averages for New Jersey, California and Pennsylvania. I do not know exactly what that means. It is interesting to note that out of the total of 407 released in Michigan, 193 were released after having been committed for first-degree murder, while 214, almost the same number, were released after having been committed for second-degree murder. Again, one would be tempted to assume that in a state which does not have the death penalty a first-degree murder conviction would be more likely, but the Pennsylvania figures are contradictory, because there were there altogether, including those executed, only 200 persons committed for murder in the first degree, 103 to be executed and 97 to serve life sentences, while 950 were committed for murder in the second degree. So the theory that Michigan has relatively more first-degree convictions because it does not have the death penalty, does not seem to be true.

I reported in the statement on a questionnaire which was sent out by the International Penal and Penitentiary Commission, which had established a committee for the study of the death penalty, not for its deterrent effect, but a study on the penitentiary aspects of capital punishment; in other words, the effect of the death penalty on institutional administration. That questionnaire was sent out to all the member states of the Commission, but the replies were not sufficiently complete to merit publication. We did analyze all the replies, however, and to some of the questions they were fairly full. I have taken a sample of theirs for use in this connection. The important general conclusion that could be drawn from these replies would be that prisoners sentenced to life imprisonment, or whose sentences have been commuted, do not seem to behave either in prison, or after discharge, on license or on parole or by pardon, in such a way as to render them a serious threat to the community. It would appear from the replies and from other documents concerning the behaviour of this particular group of offenders that they are not difficult prisoners. They commit less than their share of disciplinary violations and those who are released commit less than what might be regarded as their share of later crimes. It is true that occasionally such a prisoner has been known to commit a second murder. One case is mentioned in the reply from England and Wales that over a period of time such a prisoner committed a second murder.

I referred to an article in the Annals where Dr. Giardini, who is Director of Parole in Pennsylvania, secured certain data from states covering capital offences—and they vary from ten years in one state, to 20 and 38 years in other states. The total of 195 prisoners reported did not include those pardoned or who left the institutions of these states by parole, or transfer to a mental institution and so on. The report made to Dr. Giardini by the parole departments of these twenty states suggests that the institutional behaviour of murderers was very good compared, with what we know of the post-institutional behaviour of parolees who have been committed for other offences. They are quite favourable figures as a matter of fact.

In concluding the statement, I mentioned the fact that I think this whole question of the death penalty is basically not a question of statistics, but a question of feelings, and that the ethos of a people may be such that it supports this particular punishment. In other countries there is a lack of such support. In either of these classes of countries the attitude depends upon a great variety of factors which have probably little to do with statistics on whether or not

the death penalty is a deterrent. At the end of my statement, I quoted from Professor Kadecka who was the Austrian delegate to the International Penal and Penitentiary Commission, who after making a study of the death penalty and homicides in his own country, concluded that the data he had found would probably offer arguments for either side and that neither would convince the other, because the question of the death penalty is not yet a question of experience, but one of personal conviction, sentiment, and faith.

I apologize for having made this lengthy presentation. You must be tired of it if you already have read the statement.

The PRESIDING CHAIRMAN: Now, it being one o'clock, we will adjourn until this afternoon at 4 o'clock.

The WITNESS: I am at your disposal, Mr. Chairman.

The PRESIDING CHAIRMAN: We will proceed in camera for a few moments. (The committee went into camera).

AFTERNOON SESSION

The PRESIDING CHAIRMAN: Will you come to order, ladies and gentlemen, please.

I think Professor Sellin, you had completed your presentation on capital punishment?

Professor Thorsten Sellin, Chairman, Sociology Department, University of Pennsylvania, recalled:

The WITNESS: Yes.

The PRESIDING CHAIRMAN: I would like Mr. Blair to submit a question or two at the outset to clarify some of the matters.

By Mr. Blair:

Q. Mr. Chairman, these questions are purely for clarification of what was said this morning. Professor Sellin, in your opening remarks you mentioned what you called dogmatic arguments on the question of capital punishment. I wonder whether you might wish to summarize some of the more important dogmatic arguments so that they might appear in one place in our record?—A. I have not attempted to collect all such arguments for or against the death penalty. They can be found scattered, for instance, in the evidence given to the Royal Commission on Capital Punishment and in the work of writers for or against the death penalty. As an illustration I might say that the claim that the death penalty is the only punishment by which a murderer can properly expiate or atone for his crime, that he who takes a life deliberately or wilfully should lose his own life, is what I would call a dogmatic claim. I do not know of any way of disproving or proving such a statement. It is the way one feels about it. On the other side is the statement, shall we say, that no one has the right deliberately to take another person's life, because the Creator has given him that life, and man should not take it. I place that in the same category of dogmatic statements. One person believes it; another does not believe it.

I mentioned this morning that the death penalty did not seem to rest on any immutable principle. It is perfectly clear that in Canada and in England, and in other states that have the death penalty, there are enough people who believe in it so that they can make their voices heard and maintain, support, or secure legislation which imposes capital punishment.

In the Netherlands and in the Scandinavian countries and in Italy, Western Germany, and some of these Latin American countries I mentioned, it is evident that people do not take that view, and that their concept of justice, therefore, differs in this regard. They do not believe that a person should expiate his crime by having his life removed from him.

The death penalty has been regarded as the only just punishment of murder. But abolitionist countries do not have the same concept of justice in this case, and it would be difficult for anybody to claim that their concept of justice is inferior to the concept that exists in countries that have the death penalty. I remember that Sir Alexander Paterson, who was chairman of the Prison Commission of England and Wales in his evidence before the Select committee on capital punishment back in the 1930's stated that he supported the death penalty because life imprisonment was not humane—that a person after he had spent a long time in prison was not fitted for society and that it was cruelty to hold him in prison, and charity to put him to death. I call that a dogmatic statement because, while it is true that there are persons who have committed murder who refuse absolutely every effort to secure leniency or reprieve and insist on being put to death because they themselves feel that somehow or other they have forfeited life, the vast majority of persons who are in that position, strongly prefer imprisonment to death. I can say that the first type of person would be a great rarity, and, if a prisoner were asked which penalty he would prefer he would in all but extremely rare cases select what Mr. Paterson regarded as the more inhumane punishment of life imprisonment.

The PRESIDING CHAIRMAN: How about the right of the state to take a life?

The WITNESS: The right of the state to take life can hardly be disputed. The state requires us to go to war and lose our lives in defence of our country. I can hardly believe that one would maintain with any great force that the state does not have the right to remove someone if it wants to under almost any circumstances that the state decides proper. But, that again is a dogmatic opinion resting on the general assumption that the state is supreme. As I said before, I am loathe to discuss this type of argument because I can offer nothing in the way of evidence or proof dealing with it. It belongs so strictly in what one might call the area of sentiment. Were I to hold strongly to the argument that a murderer should expiate his crime by losing his life I would be untouched, if I were logical, by any proof which clearly showed that the use of the death penalty increases murder—were such proof available. I would then hold that anyone who takes a life deliberately should lose it. The moment I let an argument intrude which can be proved or disproved, an argument based on a claim that the death penalty has certain specific effects, that it deters or does something else, which appeals to experience, then I must be willing to examine the question in the light of empirical evidence.

By Mr. Blair:

Q. I believe, Profesor Sellin, that you have some data available on the murders of police officers in the course of their duty which may be of interest to the committee, particularly in relation to the question as to whether or not police officers are better protected where capital punishment is still in force.—A. I do have some data, but they are rather defective because I have made no real effort to search for them. We have no general source of information about such matters in the United States. We have to go to the published annual police reports of our large police departments. It would no doubt be possible by questionnaire to secure the information and I intend to do so when I have a little more time.

The PRESIDING CHAIRMAN: Would you provide this committee with that information?

The WITNESS: I would be very glad to do so.

These police reports give data on police officers who have died in the performance of duty, but when I began to analyze case by case the material in the reports I discovered that it is the custom of the police to list the death of anyone under any circumstances who dies while he is performing his duty. In other words, the officer who is on the beat and falls dead with a heart attack, the officer who is crossing the street hurrying to get somewhere and is run over by an automobile and killed, the officer on a motorcycle who may be chasing a suspect—any suspect, not necessarily a murderer—and who may lose control over his motorcycle and run into a telegraph pole, these men all die in the performance of duty, but I take it that the argument we are interested in is the death of police officers while they are arresting a suspect or in a situation where the suspect uses firearms, or some other weapon, and attacks the policeman. When the police officer arrests a prisoner and that prisoner resists arrest and knocks the officer down, as a result of which he is injured and later dies from his injuries, I doubt that this is the kind of case which would concern us, because that might happen under any circumstances. I therefore selected very carefully from certain police reports those cases which seemed to be definitely ones where an officer was killed by a suspect.

First let me give you what I discovered in the city of Cincinnati, because there I have data for 100 years—from 1850, when Cincinnati had a population of 115,000, to 1950, when it had a population of 504,000. I shall give you only the number of officers killed in the manner I have indicated, for each one of the decades beginning 1850 to 1859, inclusive, and ending with 1940 to 1949, inclusive. In the first of these decades three officers were killed; in the second, three; in the third, five; in the fourth, one; in the fifth, three; in the sixth, four; in the decade of 1910 to 1919 which I do not need to point out to you, was the decade of the first world war and demobilization, eight; in the decade of 1920 to 1929, the prohibition decade in the United States, there were nine; in the 1930's, three; in the 1940's, two. This is in a city of a state that has the death penalty, and as we noted, the population had increased from 115,000 to over half a million during the century covered.

Now, let us take Los Angeles. Unfortunately, the data I picked up for Los Angeles refer only to the period 1925-42. In 1930, Los Angeles had a population of 1,240,000 in round figures; in 1940, a population of 1½ million. Since that time it has increased to almost 2 million. I shall run through these figures very rapidly. In 1925, no officers were killed; then four, two, one, one, three, one, one, two, none, one, two, and then there were five years without any officers being killed, and in 1942 one. California has the death penalty, as you know.

Then I took Detroit. Detroit is the only really large city in a non-death-penalty state. I have here figures beginning with 1928 and ending with 1948, a 20-year period. They are very curious. They were very high in the early years.

The PRESIDING CHAIRMAN: Did they have a death penalty at that time?

The WITNESS: No, Michigan has never had the death penalty, so that this is not a death-penalty state. Detroit had a population in 1930 of over 1½ million, and in 1940 over 1,623,000; and in 1950, which is only two years after my figures stop, it had 1,849,000, or very close to 2 million. Now, in 1928 there were four officers killed and eleven wounded; in 1929 there were four killed and thirteen wounded; in 1930, the figures were three and seven; in 1931, there were two and five; in 1932, one and three; in 1933, one killed and none wounded; in 1934, none killed and four wounded; in 1935, one killed; in 1936, one killed and four wounded; in 1937, one killed and none wounded; in 1938, two killed and none wounded; in 1939, one killed and two wounded. Since that date, beginning with 1940 to 1948, inclusive, none were wounded and there were none

killed in 1940, 1941 and 1942. In 1943, there was one killed by a criminal and one shot during a race riot. Then there were none killed during 1944, and in 1946—I am sorry, I do not have the data for 1945 for Detroit. In 1947, two were killed and none wounded; in 1948, none killed and none wounded. What has happened since 1948, I do not know; but a curious thing in these figures is that the high figures were in 1928, 1929, 1930 and 1931, and then they begin to drop off. In spite of the increase in population you begin to have some blank years, or only one or two killed during the year, and beginning with the forties there are only two years from 1940 to 1948 when any police officer was killed, one in 1943 and two in 1947, and none wounded.

We must remember that there is no death penalty in Michigan and that these killings nevertheless dropped off very much in the way they dropped off in the other cities as well, and knowing Detroit in the late twenties I suspect that the larger number of killings and woundings at this time may well be explainable by the organized crime situation in Detroit and other peculiar local circumstances. In other words, it is evident that if the death penalty is necessary for a deterrent, it is difficult to explain the drop in these killings and woundings in Detroit. The downward trend seems to be a phenomenon that has been occurring in all of the cities I have mentioned. It is a curious thing which I propose to investigate further by securing a great deal more material from American cities to see if it holds true for all of them. I have some additional data for Philadelphia.

Hon. Mr. ASELTINE: Do you have any figures for Chicago?

The WITNESS: No, because I did not have any more than one or two reports handy.

Mr. WINCH: Could I ask a question before the witness leaves this subject? Is it your understanding or analysis from the studies you have made that the cycle of homicides is approximately the same both in cities that have the death penalty and those which do not?

The WITNESS: I am sorry to say that I have no homicide rates for cities. In my presentation this morning I discussed only the homicide rates of contiguous states with or without the death penalty. If those rates are examined there is no way of telling which states have the death penalty and which do not.

Mr. WINCH: In Detroit they do not have the death penalty and in Los Angeles they do and you found the number of police killed almost the same, proportionally?

The WITNESS: I would hesitate to say that right away because first of all the two cities differ very greatly from one another. As you know, Los Angeles is a great sprawling community that has increased its size by constant incorporation until it covers an enormous area in part sparsely populated. It is not like Detroit which is a solidly packed urban community.

The PRESIDING CHAIRMAN: With two cities within its corporate boundaries? Hamtramck and Highland Park are both cities in themselves?

The WITNESS: Yes, that is true, but Los Angeles on the other hand, as I said, contains a great many small communities inside its city limits. For 1928 to 1933—the years for which I have comparative figures of police killed in Los Angeles and Detroit—while Detroit at that time had over 300,000 more people in it, there were nine policemen killed in Los Angeles and 15 killed in Detroit, which had a population about 300,000 larger than that of Los Angeles. I doubt if one can draw any conclusions from these figures without knowing the political, social and economic conditions and the amount of organized crime in the two cities for that particular period. Since that time, as I said, killings of police by criminals have largely disappeared in both cities so that since 1933 there is no reason to assume that Detroit is any worse than Los Angeles

in that respect. For Philadelphia I have data from 1941 to 1953 inclusive, a period of 13 years. During those 13 years there were ten police killed by criminals.

Mr. WINCH: What is the population of Philadelphia?

The WITNESS: In 1950 Philadelphia had 2,065,000 inhabitants—about 200,000 more than Detroit. There were ten police killed by automobiles during the same period of 13 years.

Mr. WINCH: Were they killed in the course of pursuing criminals or something of that nature?

The WITNESS: No, not at all. They were traffic police who were knocked down by automobiles, or they were involved themselves in motorcycle or motor vehicle accidents. There was one killed by an explosion. One had a heart attack after he made an arrest and died later and one died as a result of the accidental discharge of his own revolver. When he was pursuing an offender he pulled out his gun at some time or other and it was accidentally discharged. Comparing Detroit with Philadelphia during the period from 1941 to 1948, there were three policemen killed in Detroit and six killed in Philadelphia. Now, Pennsylvania has the death penalty and Michigan does not. Again, let me say that I do not consider that these figures have any bearing on that question. One case more or less may depend on peculiar circumstances.

These are the only data I have so far gathered concerning police killings and woundings. It seems to me, however, to indicate a trend which strikes me as being similar in a sense to the general homicide rate trend which I showed you in connection with the graphs of the various states.

The Presiding CHAIRMAN: In other words, you do not think the death penalty has any effect on the homicide of policemen one way or the other?

The WITNESS: I doubt it very much.

The CHAIRMAN: Now, if it is your pleasure we will start the questioning period. Mr. Thatcher?

Mr. THATCHER: I have just one or two questions, Mr. Chairman. Would you say then, Professor Sellin, that the chief conclusion you arrive at from this evidence is that the homicide rate in a country is not much affected by whether or not you have the death penalty?

The WITNESS: Yes, I would say, that as far as one can tell from statistics, it does not seem to make any difference whether or not the state has the death penalty. The homicide rates seem to move independently of that fact and are, so far as I can see, connected with local circumstances, the character of the population, shifts in the nature of the population during a period of time and other social conditions in general, which under certain circumstances favour a high homicide rate. And then if they change, they favour a lower homicide rate.

Q. In your opinion, life imprisonment would be just as much a deterrent to murder as the death penalty?—A. If you consider the fact that those states which did not have the death penalty have no other substitute, and if with that substitute the homicide rates are no different in those states from the homicide rates in the states which have the death penalty, I do not see how you can come to any other conclusion.

Q. Thank you. . And would you say from the studies which you have made that throughout the western world, generally, the trend is away from capital punishment?—A. Certainly. Since the war several countries have abolished the death penalty which had it previously. I think the trend was established before the first world war and that up to that time there was, generally speaking, a tendency to abolish the death penalty in more and more countries. Of course, then came the world war and during and after the world war there was a recrudescence of the death penalty. Even in some

countries that had previously abolished it, there was a temporary restoration; both Norway, Denmark, and the Netherlands as well as Belgium had recourse again to the death penalty for collaborators, for crimes in the nature of treason.

As soon as that brief period of readjustment had been passed through, they all went back to the old penalty of life imprisonment.

Germany, of course, had the death penalty until the new constitution was adopted in Western Germany in 1950 and it was heavily used during the Nazi regime.

You will recall that Mussolini introduced the death penalty again, but the government of Italy abolished it in 1948. So Western Germany and Italy are the two countries which have been added to the abolitionist list in Europe in the late years. In the Middle East, Israel abolished the death penalty in February 16, 1954.

There have been no recent additions to the abolitionist states in Latin America to my knowledge. The trend was pretty well established before the second world war.

If you consider the fact that most of the states that have abolished it had the death penalty 100 years ago, I suppose that from a long-term point of view we can say that there has been a decided trend towards abolition of the death penalty for murder.

Q. Thank you. Now, one more question; I wonder if you care to express your personal opinion or your personal views from the studies which you have made? As to whether you think that capital punishment should be abolished?—A. As a student of criminal behaviour, I would like to see a punishment utilized that is effective. But when I see a punishment that is not efficient but seems to be utilized in a sense a haphazard manner, I question its value. I cannot say that my opposition to the death penalty is due to any sentimental regard for this or that particular criminal. I recognize that many at least of those who are sentenced to death are, from their records and so on, not very desirable members of society. I recognize also that we are not in some respects particularly careful of human life. We kill thousands of people by reckless driving and we kill other thousands of people by carelessness in industry in not providing the necessary safeguards.

But I would like to see penal treatment based on something less than emotions because I think that emotions and sentiments are not going to provide us with a proper basis for dealing with the crime problem. I think the use of the death penalty, therefore, has in a sense, hampered us in developing more effective forms of treatment.

Q. Thank you.

The PRESIDING CHAIRMAN: Now, Mr. Boisvert?

Mr. BOISVERT: No, Mr. Chairman.

The PRESIDING CHAIRMAN: Mr. Mitchell?

Mr. WINCH: Might I ask a supplementary question, Mr. Chairman?

The PRESIDING CHAIRMAN: Is it agreeable to the committee?

By Mr. Winch:

Q. As a result of your last statement and because of your extensive study of capital punishment, are there any considerations in your mind whereby you personally think that capital punishment should be exercised, and if so, what are they?—A. I can understand the very strong sentiment and feeling which develops during a great crisis such as a war. I can understand the sentiment of the peoples of the Netherlands and of Denmark who, during the occupation saw some of their fellowmen join the occupation forces and fight against their country, whatever the reason may have been.

What has happened, however, in all of these countries is that while they utilized the death penalty during the very first years for collaborators—that is, immediately after the war, there was a wave of death sentences imposed and actually executed—gradually as cases came up later, and as a case would drag out for many years before it was disposed of by the courts, the courts more and more began to impose prison terms. I do not believe it was because the cases which were delayed were less serious in character, but that there developed, after the first immediate reaction, a greater and greater reluctance to utilize the death penalty. Now, in peacetime I see no argument for it.

Q. In time of peace in the United States and in Canada under our criminal law of Canada and under yours of the United States, are there any circumstances in your mind, or any criminal act against a society, wherein as a result of all your intensive study you think we should have capital punishment?—A. No.

By Mr. Mitchell (London):

Q. Mr. Chairman, there is one point in Professor Sellin's submission this morning which I feel was not necessarily overlooked but has not been adequately covered. We, in this committee, Professor Sellin, have discussed at various times degrees of murder such as you have in many states of the United States and we have also discussed the practice which has grown up and which is now in fact authorized by the Criminal Code of convicting for manslaughter rather than convicting for murder, and these various definitions, both in your law and ours, are designed to cover the difference between what I might call cold blooded premeditated murder and a murder which is committed either as a result of provocation or as a result of passion. We also have some evidence before us that the percentage of cold blooded murders to the number of homicides in one country may be considerably higher than the percentage in another country, and that in fact in one country there may be more cold blooded premeditated murders in one province than in another. Your figures and your graphs this morning indicate homicides as a whole. They do not attempt to distinguish between the premeditated murder and the one that is committed as a result of provocation or passion. Now, it is admitted—at least I would be prepared to acknowledge—that the death penalty, or the execution itself, as you indicated the difference in term, cannot have any substantial degree of deterrence for a person who commits a murder in the heat of passion. Would you also say that your graphs represent a true statement as to the figures that would result from examination of premeditated murders?—A. I suppose that when one thinks of premeditated murder the best example is gangster murder, the practice of taking somebody for a ride. It is as premeditated as anything could possibly be. As you know these murders have occurred in some parts of the United States in certain cities, in particular, with considerable regularity, and in the past—less now than before—it was extremely common in some cities during the twenties. I forget the exact number, but I think there were something like 300 in round figures of these gangster murders in Chicago during the twenties and not a single prosecution.

Q. May I interject that the degree of deterrence which the death penalty had in the state of Illinois, if it was there at all, was reduced by virtue of the failure of the law enforcement officers for whatever the reason may be?—A. You were asking me whether or not I knew whether the homicide rate, or the rate of deliberate murder, would be the same as these in the graphs I have shown you and what possible relation there might be between such a rate if we had it and the use of the death penalty. My answer was designed to show that when it comes to murders committed by organized gangs in states that have the death penalty—most of them did occur in states that have the death penalty because all of our large cities with organized crime are in such states. The

existence of the death penalty and the fact that some people were executed in Illinois during these years did not seem to cause any hesitation on the part of gangsters. You referred to the fact that this is a failure of law enforcement. Then, we place the whole argument on a different basis. There is no doubt in my mind that we have to consider the effectiveness of law enforcement in connection with the deterrent effect of any kind of punishment. I take it for granted that if punishments are not exacted or if they are exacted in such an extremely small percentage of cases that there is little risk of being punished for a crime, then there can be no deterrent effect in the punishment itself because the risk is slight that one will be punished. Where the risk is great that one will be punished—which is the case comparatively speaking in homicide because it is a crime which has a rather high detectability, you might say—the question arises whether it is the enforcement with subsequent imposition of some punishment which has the deterrent value or whether it is merely one particular type of punishment such as the death penalty, which has a deterrent value. Beccaria, in 1764, stated that it is the certainty and not the severity of punishment that is effective.

Q. On these graphs then, Professor Sellin, would you be prepared in so far as what I call premeditated murder is concerned, to say they would be substantially the same as— —A. I said there is a basic assumption underlying these homicide rates; that this, one type of murder is proportionately the same from year to year. It is impossible for me or anybody also to know the exact proportion of murders, premeditated or unpremeditated, in the homicides that occur in a community because that is dependent upon so many things. Some homicides are never discovered; they may be listed as accidents, and so on. Some homicides change definition during the administration of justice. For instance, in one southern state there is a tremendously high number of indictments for first degree murder and a very, very low proportionate number of convictions. It seems peculiar until you realize that the district attorney in that state, who is paid on a fee basis, receives \$50 a case if he prosecutes on a capital charge and only \$25 a case if he prosecutes on a non-capital charge. I suspect that that has something to do with the disproportion I mentioned. Without knowing the details of the administration of justice, without knowing how prosecuting attorneys operate and the whole procedure of getting a case into and through the courts, the efficiency of the police and so on, it becomes very difficult to draw any specific conclusions with regard to the question you raise as well as with regard to many other problems involved here.

Q. One other question arising out of these figures—and they are very interesting ones—that you gave us with respect to Detroit, Los Angeles and Philadelphia, from which it appeared that the incidence of murder was much higher in the years such as depression years and, as you said, demobilization years. From that increase, does it not appear that there were more policemen killed and wounded in the cities in the states which did not have capital punishment during those crucial periods?—A. I want to point out the fact that I had only one city in an abolitionist state, and that was Detroit, and I had data only for 1928-48. If you take the depression as having struck hardest in 1932, for instance, and if you take the 1930's, from 1930 to 1939, there were three policemen killed in Cincinnati, which in 1940 had a population of 455,000. In Los Angeles, which had a population of $1\frac{1}{2}$ million by the end of the thirties and had 1,238,000 in 1930, there were 10 policemen killed during that same period, as compared with three, but population was about three times as large in Los Angeles as in Cincinnati. Proportionately, there were no more police killed in one than in the other. Now Detroit, which is the only abolitionist-state city that I have, with a population of between 1,568,000 in 1930 and 1,623,000 in 1940, had a much larger number of policemen killed; they had 14 killed. There is a difference there of 14, as compared with 9 in Los Angeles. But you

have to consider the nature, as I said, of Los Angeles and the peculiar character of Detroit, a large industrial city with a tremendously great proportion of adult males, because the population pyramid of Detroit is quite peculiar. I had occasion some time in the past to look at it, and the male population in the working-age period of life in Detroit is quite abnormally swelled, undoubtedly because of the labour situation in Detroit with its great factories. So one has to consider the difference in the population of these two cities. I suspect that a comparative study of the population distribution by age and sex of Los Angeles and of Detroit would yield quite different data and would show that the types of people living in these two cities are different.

The PRESIDING CHAIRMAN: In Los Angeles they would be old and senile, and in Detroit they would be young and virile?

The WITNESS: I do not know whether that would be true, but I think that there would be a considerable difference in the character of the population of the two cities. Since the crime rates are generally highest among males between 16 and 40, the proportion of males of 16 to 40 in the population of a city will determine to a certain degree the extent of criminality, because women have very low crime rates and so have children under 16. When it comes to robbery, burglary, automobile thefts and offences of that nature, the rates are highest for those between 16 and 25.

Mr. MITCHELL (*London*): Is it not possible that the existence of the death penalty might have had something to do with the difference?

The WITNESS: I doubt it. If it does the burden of proof rests on someone, and I do not know which one should undertake the proof, the one who defends the death penalty or the one who opposes it. Throughout the history of debates on this subject, it has always been the opponents of the death penalty who have tried to secure the best possible empirical evidence; the proponents have tended to rest their case on dogmatic assertions rather than on research.

By Mr. Winch:

Q. I have a question which arises as a result of the question asked by Mr. Mitchell. Is it your experience as a result of your studies that the majority of gangster slayings in the United States are in those states which have the death penalty?—A. Yes, it is perfectly obvious, because I have never known that there was large organized crime in Rhode Island or Maine. They are states with small populations. Then you have North Dakota, which has no death penalty, Wisconsin, Michigan and Minnesota. Minnesota, Wisconsin and Michigan are the only states in which you may find some organized criminality. All the rest of the states have the death penalty and, therefore, Chicago, New York, Philadelphia, Pittsburgh, Los Angeles, San Francisco, and so on, are in death-penalty states, as well as all the large cities of the south.

Q. Actually, sir, my question is this: As a result of your intensive studies, when it comes to the gangster influence in the United States, the death penalty is not a deterrent to the commission of homicide?—A. Apparently not, since gangsters seem to flourish most in death penalty states.

By Mr. Fulton:

Q. There is no comparable city where gangsterism exists and where they have not the death penalty?—A. Detroit, I think, would be a comparable city, because Detroit has had organized criminality on a large scale.

Q. What about Los Angeles?—A. The twin cities have been reputed to have some organized criminality.

Q. What about Los Angeles?—A. Los Angeles always has had some.

Q. The fact is that the rate of police killings does appear to be higher in Detroit than in Los Angeles?—A. I have not discussed rates at all. I have given absolute numbers.

Q. Absolute numbers, very well.—A. I do not know how one should compute such rates.

Q. I should not have used the word. What I meant was the absolute number.—A. That is true, but, of course, I have only Los Angeles. What would happen if I had Chicago? I will get Chicago so that you will see what the situation is there. It is a city perhaps, in a sense, more comparable to Detroit from the point of view of its industrial character. Of course, it is twice as large, but Chicago would probably be a better comparison with Detroit than Los Angeles would be.

Q. Mr. Chairman, I am not going to ask many questions because I had to be away in the earlier stages of the meeting and would probably be repeating what was asked before, but I had a question with respect to page 28 of the professor's brief. If it has not been covered before, I would be interested in following it up. On page 28 of your brief, professor, you are analyzing the situation with regard to the behaviour of persons who, as I understand your brief, had been convicted of homicide, but had been given life imprisonment as a sentence, and had then been paroled and you then make the statement:

Taking Pennsylvania data, the accuracy of which Dr. Giardini believed to be reliable, 36 paroles in capital cases had been given between 1914 and 1952. Of these 3 had been returned with sentences for new crimes and one for parole violation; one had absconded, 7 had died, 7 had completed their parole satisfactorily and 17 were still on parole on March 31, 1952.

You do not tell us, and I wonder if you know, what the new crimes were for which those three were returned?—A. No, I do not know. The article from which the data were taken did not mention it. It appears in the Annals volume and I took the material from there.

The CHAIRMAN: What book are you referring to?

The WITNESS: The volume of the Annals on Murder and the Penalty of Death. The table from which I took the material is found on page 91 of this article by Dr. G. I. Giardini and Mr. R. G. Farrow, of the staff of the parole board of Pennsylvania.

By Mr. Fulton:

Q. I am perfectly prepared to accept the total figures. The point I wanted to make would have some bearing if we had some information as to the type of crime.* There you have three returned and one absconded. I presume that means he just failed to observe his parole and they lost track of him, which means that 4 out of 36 committed subsequent crimes.—A. One at least had disappeared. Apparently he had not committed a subsequent crime because in that case he probably would have been fingerprinted. His fingerprints would have been cleared through the F.B.I. in Washington and the Pennsylvania penitentiary would have been informed of the fact.

Q. I would presume it would be a crime if he broke his parole?—A. Not necessarily. He may have left the state without authorization or otherwise have broken a parole condition.

Q. So you have your four subsequent offences—four and one subsequent offences—out of 36. That is five out of 36.—A. But you must remember that this covers a period from 1914 to 1952. These people were not released during one year but over a very long period of time, and when you consider the fact that parole statistics generally from penitentiaries show a very very high percentage of returns—I do not have such data with me but I could

*In its reply to the questionnaire of the International Penal and Penitentiary Commission, Pennsylvania reported that 3 paroled murderers had been re-committed to prison for new offenses, none of which was murder. See Appendix [Ed. note]

easily secure it from the very excellent and detailed annual reports of the New York State division of parole for instance—I would consider 4 out of 36—and unfortunately there is no way of telling in which year these were returned—as a very very favourable and extremely low rate of recidivism, especially considering the period covered.

Q. You were using the word "favourable" on page 28 of your brief as meaning favourable in comparison with other parole figures?—A. That is correct.

Q. But you still have the fact that if you take the 36 who had been paroled—I grant it is over a period from 1914 to 1952 but we are dealing with totals—and only 36 paroles occurred in that period. Of this number 17 were still on parole which leaves a total of 19 to be dealt with and of those 19 five had committed subsequent offences so that five out of those 19, or five out of a total of 36, committed subsequent offences. I am wondering whether in absolute terms it is safe to regard this as a favourable figure remembering that these men are convicted murderers?—A. It is safe considering that the incidence of recidivism for crimes against property committed by parolees is rather high.

Q. That may be so, but I used the words "in absolute terms." Is it safe to say it is a favourable rate that five out of 19 convicted murderers who have been paroled committed subsequent crimes? I wonder if you would not agree that that is rather a dangerous generalization?—A. Not in comparison with what generally happens to people who are paroled from prisons and that is the context of this entire presentation and it is tied up with the statements and replies made from various countries as to the later criminality of persons who have left prison after having been originally committed for murder, and that figure seems to me to fall right in with the replies made by England, Wales, Scotland and other places. It was meant only in that connection.

Q. For comparison with the number of returns experienced with other offences?—A. Yes, the fact also being true that when a person with a previous criminal record is returned to prison for murder, his previous record, with extremely rare exceptions, contained exclusively other offences than homicide.

Q. I had taken it when I read it as being a part of your case against the proposition that it is dangerous to give persons convicted of murder only life imprisonment. As I read your statement you were dealing with that argument which is quite frequently advanced in justification of capital punishment and I had read your statement as indicating that you felt the parole figures—the performance of those paroled after having been convicted of homicide—disposed of that argument and now you say, however, it was not in that sense absolutely that you had used the word "favourable" but merely in comparison with the return rate of those convicted on other offences and who were subsequently paroled.—A. Yes. It appears on page 29 of my brief in the first paragraph where I say:

It is a well-known fact that the incidence of recidivism is high for crimes against property and considerably lower for offences against the person, including sex offences. It is our policy nevertheless to sentence thieves of all kinds for relatively short terms. We release on parole all but a small proportion of prisoners from our penitentiaries, taking the risk that they will again commit crimes, a risk that increases with every new sentence and subsequent parole. It appears from the data referred to above and similar data that the type of criminality which may again be engaged in by a person paroled after serving part of a sentence for murder is no worse than that which may be expected from other prisoners paroled; indeed the risk of later criminality by released murderers appears to be very small. Judging from these facts and the manner in which the capital offenders are released, it seems that

imprisonment and parole offer adequate protection against whatever future damage to society such offenders might do. Such damages do occur but their seriousness should be weighed against the risk of errors of justice and other detrimental effects of the death penalty.

Q. I think you said there have been some cases of paroled or released convicted murderers repeating that particular crime. Do you know of many occasions when that has happened?—A. No. In the questionnaire which we sent out from the International Penal Penitentiary Commission, that question was asked and there was only one case mentioned in a reply. That reply was the one from England and Wales which said that there had been one case in which there had been a second murder committed. But in all the countries which replied to this questionnaire—they dealt with quite a long period of time—that was the only case. I know of other countries where it has occurred. I recall at least one Pennsylvania case and I believe there was one mentioned in one of the articles in the Annals.

The PRESIDING CHAIRMAN: Mr. Winch?

Mr. WINCH: No, Mr. Chairman. All my questions have been asked.

The PRESIDING CHAIRMAN: Mr. Cameron?

By Mr. Cameron:

Q. Professor Sellin, in your table (No. I) you indicate that a great many of the Latin-American countries do not have the death penalty. Do you agree with me that in so far as they are concerned their value of human life may be somewhat less than the value placed upon human life in such countries as Canada, Australia and New Zealand?—A. I do not know.

Q. I offer it merely as a suggestion that the value which they place upon human life in some of those countries is much less than the value we place upon human life in countries such as Canada and the United States.—A. It is possible, of course. I have no specific knowledge of it.

Q. Will you agree with me that the value placed on human life in countries such as Canada and the United States is probably the highest of all the countries, and that we value human life, let us say, in Canada higher than anywhere else in the world, or in countries similar to Canada?—A. If you put in "similar" I might agree with you; otherwise, I would not, because I doubt it.

Q. There are other countries however, such as India and China and so on where the value of human life is rated much lower than it is in some countries?—A. I would be glad to agree with you that, generally speaking, human life is rated very high in Canada and in the United States and in similar countries.

Q. May that not be one of the reasons, because we rate human life so highly, that we exact such a severe penalty upon anyone who takes it away from a person?—A. In that case you would have to consider the Netherlands, Norway, Sweden, Switzerland, Denmark, and Western Germany who have either the same or a lower homicide rate than Canada, and assume that they did not place an equally high value on human life. I do not think that is a possible argument.

Q. You mentioned two countries, Germany and Italy. Is it not a fact that in Germany some years ago they were accused of genocide on a very large and extensive scale which indicated a very low regard for the value of human life?—A. At that time, yes.

Mr. WINCH: In only one country, though.

The WITNESS: But that still does not take care of Denmark, Switzerland, Sweden, Norway and the Netherlands.

By Mr. Cameron:

Q. Well it does seem to be an anomaly to me at any rate that countries which placed such a low value on human life at one time, through a change of administration now place such an extremely high value on it at this particular time in regard to the person who commits a crime of violence.—A. That is not at all strange to me because politics can change, different sections of the population can come into power and bring great changes in attitudes on these matters. Certain parties seem always to have been opposed to the death penalty and traditionally so, while others have traditionally supported the death penalty. On the whole, conservatives in all countries tend to be conservative in this respect as well. These changes in attitudes have to be understood in connection with the historical changes which have occurred in a country's economic and social problems, as well as in their political orientation, and I think that explains the Western Germany situation.

Q. You will agree that the most grievous crime there is is that of taking human life without cause.—A. Of course it is, there is no doubt about it.

Q. And that society in accepting the penalty or endeavouring to prevent that crime should take the most grievous measures to do so.—A. Society undoubtedly has the right to take the measures that it believes to be most effective. But to me, the death penalty is not an effective deterrent of murder.

Q. As you stated before, that is a question of opinion. And you can be dogmatic about it on the other side.—A. No, that is not a dogmatic problem, as I have explained in connection with the statement which I quoted from the Minister of Justice for New Zealand, as you will recall.

Q. Then I withdraw the word "dogmatic". —A. The Minister of Justice for New Zealand stated that statistics did not prove the case for capital punishment or against capital punishment. That is true because statistics are not the only thing which enters into the discussion. But what statistics can prove is whether or not the death penalty has a deterrent effect and reduces murder, and I think that they prove that this is not the case. I think it is impossible to discover that the death penalty has anything whatsoever to do with the existence or with the non-existence of murder in a community. That phenomenon is based upon much deeper and more important conditions, such as, as I said, the character of the population, the economic conditions, the social conditions and enlightenment of the community and a variety of other things.

By Mr. Cameron (High Park):

Q. The inference I drew from the diagrams and the inference that you were drawing from them, was as opposed to states which had the death penalty and states which did not have the death penalty and which are more or less comparable on economic and ethnic grounds with countries such as that, that the inference was the death penalty apparently was not a deterrent, nor that it deterred people from committing murders because where they did not have the death penalty these murders were more or less on the same parallel lines? —A. That is homicides, yes.

Q. Yes. It is an inference?—A. Yes, an inference from data.

Q. And you, I take it, agree with the statement that it is the certainty of the punishment and not the severity of punishment which is one of the very greatest agencies in preserving law and order. You agree with that statement? —A. I agree with it, but I would qualify it. I would qualify it in this way. The certainty seems to be more effective in certain types of offences, and less effective in others. I think when it comes to murder even certainty of punishment is a less effective deterrent, than in most other crimes. Murder is contrary to all of our deepest instincts. In spite of what seems like rather high homicide rates in the United States, when we consider the tremendous urbanization problem of that country, its great variety of races and population

groups, and the many conflicts, situations that arise in that type of population, I am certainly surprised to find that in 2,421 cities with a total population of 70 million, which is almost half of the population of the United States, there were in 1951 only a total of 3,416 murders and manslaughters excluding negligent manslaughters which are almost entirely due to reckless operation of automobiles. And what is the proportion of murders in that figure of 3,416? That we can only guess. I do not know what the exact proportion would be, but chances are that there are much fewer murders than manslaughters; therefore, maybe not more than 1,000 or at the very most 1,500 of these would have been murders. Considering all of the conflict situations in which human beings find themselves, what is it that keeps them from taking lives under certain circumstances if it is not the general moral ideas that have been developed in them from childhood on, a strong sentiment that life is sacred. This is what controls us. Most of us have been in situations where we have been wronged by somebody, perhaps very deeply, but the idea of taking that person's life has never even occurred to us. Why not? Because we have been conditioned that way. Our entire bringing-up and all the moral influences to which we have been subjected have made it impossible for us. So far as the argument of the police is concerned that there are some people who do not carry weapons for fear that they may kill some one and suffer the death penalty, I suspect that what they are afraid of is to take a human life, and not of the subsequent punishment.

Q. Just leaving out of consideration for a moment the deterrent effect, might it not be that the existence of the death penalty is but the outward expression in one form of the inward conditioning towards the sanctity of human life, and is the instinctive reaction of a society so conditioned, which says that human life is so sacred that to take it will automatically invoke the supreme penalty?—A. Alexander Paterson thought that the death penalty was much more humane than life imprisonment.

Q. I am not using that argument.—A. No, but I understand your argument. Life imprisonment is a serious penalty.

Q. Not as serious?—A. Again it depends on whether you are an Alexander Paterson or not. To him, death was a less serious penalty.

Q. There might be room for argument in support of the contention that the existence of the death penalty is but the outward indication, if you like, of that inner conditioning, the instinctive reaction which says that human life is so sacred in our view that if it is taken the supreme penalty must be imposed.—A. I agree that there is room for argument along those lines. I would agree that the reason for keeping the death penalty under those circumstances is, no doubt, tied up with the belief in the sacredness of human life. At one time property was regarded with the same degree of sacredness. Anyone who took five shillings or more had to be hanged.

Q. I know that.—A. The fact is that it is true that people were hanged for these things, and at that time—

Q. Perhaps we did not have a sense of proportion then.—A. I do not know. Someone at least believed that it was such a serious crime that the only way—

Q. I do not think that society as a whole did.—A. I do not know. The only thing I know is that governments established it and governments executed it.

Q. Governments were not very democratic in those days. They were perhaps not the reflection of the will of society in the same way as we like to think they are today.—A. Again I can only point to the Netherlands and the Scandinavian countries, which do not feel that it is necessary to use death penalty in these cases, and yet they regard human life as extremely sacred.

Mr. FULTON: Yes, I am sure they do.

By Mr. Boisvert:

Q. I have just one question. Professor Sellin, would you be kind enough to tell me why the incidence of recidivism is higher for crimes against property than for crimes against the person?—A. We know that persons who commit crimes against property tend to persist in such behaviour much more than those who commit crimes against the person. Statistics show that whatever may have been the reason for a person beginning to take another's property, once he has begun to engage in that kind of behaviour and finds it in some way profitable in either a small or large degree, he tends to persist in doing it.

Q. Would it not be possible, Professor, that there is no deterrent now for crimes against property and there is the death penalty for a few crimes against the person as, for example, murder, and in this country we have also the death penalty for the crime of rape.—A. Generally speaking, crimes against property have increased regularly. Your question is, had there been a death penalty, would there be fewer of them? I do not think so.

Q. My question is this, Professor: is it not because there is no death penalty for crimes against property, when there is a death penalty for crimes against the person, as an example, murder?—A. I do not think so.

Mr. FULTON: You cannot be a recidivist if you are dead.

The WITNESS: That is perfectly true, you cannot. But crimes against property were apparently the most common forms of crime even during the time that the death penalty was used to combat them.

By Mr. Boisvert:

Q. Penalties are milder for those crimes, according to the penal law in every country?—A. Generally. It is impossible today to experiment with the death penalty for such offences in countries like ours. Therefore, we can only suppose what might happen. If anyone were to argue the death penalty for theft or a similar offence today, he would be considered a barbarian.

Q. That is true, but the fact remains that the death penalty is imposed in nearly all the countries of the world for crimes against a person and there is not that kind of penalty for crimes against property.—A. Yes.

Q. I would like to know if it would not be possible that the deterrent is exactly in that very point?—A. Attitudes toward property have changed so that it becomes almost impossible to debate the question. People apparently do not place the value on property today which they placed on it in the days when the death penalty was utilized for theft; even then the most common offences for which people were punished were property offences. We have utilized every possible penalty in the past in dealing with property offenders. We have never succeeded in reducing such offences by punishment but only by changing social and economic conditions that cause them.

Mr. BOISVERT: Thank you.

Mr. MRTCHELL (London): May I ask one question?

The CHAIRMAN: One moment, please. Senator Fergusson?

By Hon. Mrs. Fergusson:

Q. I have merely one question, Professor Sellin. The suggestion has been made that the countries that have the death penalty consider life more sacred and, therefore, they have that serious penalty for taking life. But could it not be that the countries that do not have the death penalty really consider life more sacred because they are not prepared to take it in such a case and are not prepared even to have the state take it in the case of a serious offence?—A. That may be a matter of opinion. Whether it is because they believe that life is more sacred or believe that it is not necessary to use this penalty

for the purpose of preventing this particular type of offence, is probably difficult to decide. A great many people have opposed the death penalty on the ground that it is no longer necessary in order to keep the murder rate down. Some countries did not hesitate to re-introduce the death penalty immediately after the war for traitorous collaborators, and there were a great many executions in Norway, Denmark, the Netherlands and in Belgium during that short span of time because of a tremendously aroused public resentment and a fear on the part of the government that if it did not permit this feeling of vengeance and retribution to be satisfied, serious disturbances might occur, just as there have been people who have argued for the death penalty, as otherwise lynchings would occur; on that point, however, the facts remain that in the United States, lynchings have occurred only in states which have the death penalty and that in the past fifty years lynchings have steadily declined in those states.

A few decades ago there used to be from 20 to 30 lynchings every year. But now, for two years in succession, there have been no lynchings in the United States.

Mr. WINCH: You say that all the lynchings in the United States have occurred in those states which had the death penalty?

The WITNESS: Yes, because lynchings primarily grew out of a conflict between the dominant white group and the Negro group and involved certain types of offences or behaviour which the dominant group in the southern states regarded as a challenge, you might say, to its sovereign authority and as violating rules of conduct which it felt to be important.

The gradual disappearance of lynchings reflects a change in relationships between the races in the southern states; these changes have occurred during the last twenty years in particular and have just been in a sense, given final approval by the U.S. Supreme Court decision regarding racial segregation in public schools.

The PRESIDING CHAIRMAN: I hate to draw this discussion to a close at the moment but the Division bell summons us to the Chamber of the House of Commons.

We were about to close anyway. Tomorrow morning we will meet in room 430 at 11.30 o'clock and if we go over into the afternoon we will have room 368.

You will find your copy of Professor Sellin's presentation on corporal punishment in your mailboxes.

EVIDENCE

June 2, 1954
11.30 A.M.

The PRESIDING CHAIRMAN (Mr. Brown, Essex West): Would you please come to order? A motion will be entertained to elect a co-chairman from the Senate for today.

Moved by Senator Fergusson, seconded by Miss Bennett, that the Honourable Mrs. Hodges be elected co-chairman for the Senate for the day.

Carried.

(Hon. Mrs. Hodges took the chair as co-chairman.)

The PRESIDING CHAIRMAN: There will be a very short *in camera* meeting of the committee today at four o'clock, provided that we do not finish this morning, or would you rather have it at the close of this morning's session?

Mr. FULTON: Let us see how we get on.

The PRESIDING CHAIRMAN: Yes. As you know, we have Professor Sellin with us as our witness. Yesterday he was discussing the question of capital punishment. Several members submitted questions, and I understand that there are more questions on capital punishment which the members of the committee desire to ask Professor Sellin. If it is your pleasure, we will proceed with that questioning, and then we will continue with corporal punishment.

Agreed.

Professor Thorsten Sellin, Chairman, Sociology Department, University of Pennsylvania, recalled:

The PRESIDING CHAIRMAN: Have you a question, Mrs. Shipley?

Mrs. SHIPLEY: I regretted that I had to leave yesterday, but I would particularly like to ask Professor Sellin, in view of his vast experience, if he has formed any opinion on the most humane method of execution, where the death penalty is still carried out.

The WITNESS: I suppose that the most humane method is the one that most quickly would put a person to death with as little personal suffering as possible. Judging from the descriptions of hangings in the evidence given before the Royal Commission on Capital Punishment, I see no reason to assume that any other form of execution is any better. I do not see how it is possible to assume that lethal gas or electrocution is any better. It is, no doubt, possible that if hangings are unskillfully done unfortunate instances may occur. That may be unpleasant from an aesthetic point of view but just as effective, one might say.

By Hon. Mrs. Hodges:

Q. May I follow that up with a question? In your experience, do you know if there is any degree of inefficiency in connection with the execution by, for instance, the electric chair or lethal gas in cases where they are in practice? —A. I have heard of cases where the apparatus has failed at the moment and there have been delays for necessary repairs and things of that order.

Q. Would you think, then, that the ratio of inefficiency, if one might put it that way, is as great for the other methods of execution as in hanging, in your experience?—A. I do not recall any case where electrocution has failed to kill a person promptly.

Q. There was a case, if I remember rightly, a few months ago in the United States—I have forgotten exactly where, but I daresay some of the members heard of it—where the man was not killed at the first jolt, or whatever it is called, and they had to administer it again.—A. They always do.

Q. This was a case which was made much of in the newspapers.—A. I have not read about it.

Hon. Mrs. HODGES: Thank you, Professor Sellin.

Mr. BOISVERT: Would you allow me to ask a supplementary question? Have you given any thought to the guillotine as a way of putting an end to life?

The WITNESS: It is certainly a quick method, but rather a messy one.

Mrs. SHIPLEY: Have you any opinion on the method of injecting poisons that would act very rapidly?

The WITNESS: I would think that that would be most objectionable to the person who has to impose that punishment, because it is such a direct personal contact. After all, in hanging he places the noose around the person's neck and adjusts it and then steps away and pushes a button or pulls a lever, but does not actually directly administer death to the person. In the lethal gas chamber, or in any system such as, for instance, the electric chair, the executioner stands in another room and administers the punishment. I would think that there would be great objection to using injections.

Mrs. SHIPLEY: Thank you, sir.

The PRESIDING CHAIRMAN: Are there other members of the committee who have questions?

By Mr. Mitchell (London):

Q. Mr. Chairman, I should like to refer Professor Sellin to the report of the Royal Commission on Capital Punishment, section 59, on page 20, where it reports:

Capital punishment has obviously failed as a deterrent when a murder is committed. We can number its failures. But we cannot number its successes. No one can ever know how many people have refrained from murder because of the fear of being hanged.

I wonder if Professor Sellin would comment on that statement?—A. I can only say that, so far as I can see, it is perfectly true.

Q. Secondly, going further into the figures which the professor gave us yesterday with respect to Detroit, Los Angeles, Philadelphia, and particularly, in this case, Detroit, Commissioner Nicholson referred to the bootlegging period prior to 1933 and to his impression that the number of killings of police officers on this side of the border was negligible, whereas from Professor Sellin's comments yesterday it appears that there were numerous police officers killed in Detroit during that period. Commissioner Nicholson's conclusion from this fact was that the fear of the death penalty resulted in the bootleggers not carrying guns and accordingly not killing police officers on this side of the border. Have you anything to say in that connection, Professor Sellin?—A. I imagine that that is an opinion expressed by the commissioner which is based on assumptions which may or may not be true. One would certainly have to investigate that problem to discover whether there is any reason for assuming that it is true. A mere statement of that nature I do not think would be adequate proof. I certainly would not be willing to accept it. There are other

states that do not have the death penalty in the United States. I do not believe that American gangsters or bootleggers flock to those states because they would be safe from the death penalty. There are entirely different problems involved here.

Q. But we have contiguous states. On one side of the border we find a considerable number of police officers killed, and in our chairman's constituency we find few or none.

The PRESIDING CHAIRMAN: Pro rata there were a considerable number.

The WITNESS: In your cities you would not have organized criminality of the character that would be found in Detroit. I think those are matters that have to be taken into consideration. Speaking of those who live by crime, may I read a quotation from Dr. Amos Squire's "Sing Sing Doctor". Doctor Squire was for more than 30 years chief physician of Sing Sing and attended many executions. Since in former years they often had as many as a dozen annually, he must have attended hundreds during that period. He says in his book, in a chapter on "Irrevocable Capital Punishment":

I am not prepared to assert dogmatically that the fear of the death penalty deters no one from committing murder. But after more than thirty years' association with Sing Sing Prison, and after studying many murderers at close range, I am certain that capital punishment does not exert the deterrent effect it is ordinarily supposed to. Murderers fall into four general classes—those who are insane, those who kill as a result of anger, hate, jealousy, or outraged honour, those who kill in connection with a professional crime career, and those who kill to get possession of another's property, although they have not previously been engaged in criminal pursuits.

The insane have no fear of death. The person who kills under the sway of violent emotion is at the time indifferent to consequences. The gangster looks upon the possibility of being executed by the state in the same way that he looks upon the possibility of being killed in the practice of his profession—a risk he must run in order to get what he wants.

The person who deliberately plans murder for profit invariably believes he is too clever to be caught and therefore does not fear the death penalty. When a man arrives at the point where he is determined to kill, for whatever reason, either he does not take into consideration the prospect of having to forfeit his own life or he does not care.

I can conceive of how a fear of consequences might restrain some persons from progressing along a course of depraved thinking to the point where they cannot turn back. But I believe that anyone who feels murderously inclined, but hasn't the nerve to carry out his desire because of fear of capital punishment, would be—and is in those states that do not have capital punishment—restrained equally as well by the prospect of life imprisonment.

Capital punishment is irrevocable. When a mistake has been made, there is no correcting it. An execution cannot be carried out in complete secrecy. Society, which has demanded the penalty, must know that it has been inflicted. Each time a person is executed, the effect upon the public is infinitely more degrading than deterrent. Innocent relatives of the victim suffer far more than he does.

By Mr. Fulton:

Q. May I ask a question? Professor Sellin, you would not, I take it from anything you said, go so far as to discount the evidence given us by experienced police officers that in their opinion, based on actual conversations with criminals, fear of the death penalty does deter them from carrying firearms, lest in a moment of agitation, fear or surprise, they might use them and thus incur that

risk?—A. Well, what I would like to be sure about is that it is the fear of the death penalty rather than the fear of taking a life that governs the individuals, because I think most of us would not like to take a human life. There are many, no doubt, who engage in criminal activity where the risk of taking human life is slight, or who perhaps engage in such activities because they do not want to take human lives. They do not want to have another person's blood on their conscience. I would doubt that it is the fear of execution which has led them to that belief or given them that attitude. I suspect that it is due to the moral ideas that they have absorbed with regard to the question of human life.

Q. Of course, that would be asking us to make a very considerable assumption, that a man who has put aside many other moral values still retains that one to the point where the dislike of taking a human life is the controlling factor. No one can prove it, but I should think it would be at least as probable that it is the fear of death, that is the fear of himself incurring the death penalty. My point is that he has been able successfully to overcome the moral scruples with respect to stealing, and even perhaps other acts of violence and criminal acts, and still you are suggesting that the reason he does not carry firearms is that that is one moral scruple that he cannot overcome. I would suggest that it is more likely that he does not carry them because he is afraid of being hanged.—A. I see no reason for accepting that argument, because, after all, we are compartmentalized in a great many ways with regard to the moral values we hold. A person may have little regard for another person's property, but he may have a very high regard for another person's life. After all, we find plenty of instances where a person even of high social status may have overcome his scruples about committing frauds, such as embezzling money, because that particular moral attitude or value has changed, it would never occur to him to break into a house and get property that way. Certainly it might never occur to him to take a human life. I think that human beings are so extremely complex when it comes to attitudes of what is right and what is wrong that one cannot infer, from the fact that a person thinks that what society believes is wrong in one particular sphere and he has somehow come to regard as permissible or possible, that, therefore, all his norms have been destroyed and he would as easily commit some other crime than the crime he actually does commit. I do not think it follows that because a person steals he, therefore, could more easily take a life.

Q. Would you agree with the general statement of principle that fear is a deterrent, or would you say that fear is not a deterrent?—A. Yes, I would not be willing to deny the fact that fear of consequences may be a deterrent. As a general rule that would be true. I think it is perfectly clear that if, shall we say, traffic laws are strictly enforced we do not want to expose ourselves to losing \$2 or \$10 regularly and, therefore, we avoid doing something which we know is definitely going to result in a harm to our pocketbook. The question here is whether or not the death penalty specifically acts as a greater deterrent than life imprisonment, and that is what I question.

Q. Coming to the other point and relating that to what you said earlier, these men given to a life of crime—and this is based on the evidence of the police officers—have apparently overcome their fear of the prison sentence which results, if they are caught in their lesser crimes of burglary, robbery and so on, and I am suggesting to you that they have overcome their fear of long or repeated prison terms. They are not sufficiently fearful of them for that fear to have the effect of deterring them from the repetition of commission of their lesser crimes; and I am suggesting it is possible, from what you have said, that the fear of the death penalty is sufficient to deter them from carrying the firearm so that they will not put themselves in a position to be likely to incur the death penalty.—A. I do not know whether it is the fear of the death penalty or the fear of taking human life, that they do not feel they can do

that, and therefore avoid the possibility of being placed in a position where inevitably, or as a result of the force of circumstances, they might have a cutting arm or a firearm ready and use it. In many of these instances where you have constructive malice, you really have self defence situations objectively while technically it becomes murder, and under the circumstances where you avoid carrying such arms it could mean a desire not to take life. Whether or not it is that or the fear of the death penalty, I suppose is something that no one can definitely say. But, the testimony of the police does not seem to be corroborated, let us say by this Sing Sing doctor, and I would want to know what experienced prison administrators who meet the same people in the institutions, get the same testimony from prisoners. I have not seen such testimony on the part of the prison administrators and they would seem to me to be in almost a better situation than police officers actually to discover over a period of time whether there is anything to this particular claim made by the police.

Q. Of course the doctor of Sing Sing would not have in his death cells at any time the man who had been deterred from committing a murder because of the fear of the death penalty. That man would not be there.—A. He would have in prison a great many persons who were sentenced to die and sentenced to various terms for robbery and burglary and other offences which are the ones which might be involved in the type of case which you have referred to.

Mr. FULTON: Thank you.

By Mr. Blair:

Q. Professor Sellin, I wonder if you could clarify for the committee the difference if any, between the conclusions you have drawn from the statistical evidence of deterrence and the conclusions drawn by the Royal Commission in the United Kingdom. Perhaps if I read paragraph 68 of the Royal Commission Report occurring at page 24 it will help the members:

The general conclusion which we reach, after careful review of all the evidence we have been able to obtain as to the deterrent effect of capital punishment, may be stated as follows. *Prima facie* the penalty of death is likely to have a stronger effect as a deterrent to normal human beings, than any other form of punishment, and there is some evidence (though no convincing statistical evidence) that this is in fact so. But this effect does not operate universally or uniformly, and there are many offenders on whom it is limited and may often be negligible. It is accordingly important to view this question in a just perspective and not to base a penal policy in relation to murder on exaggerated estimates of the uniquely deterrent force of the death penalty.

—A. I assume that the commission came to that conclusion on the basis of evidence of the type that Mr. Fulton has just mentioned. I do not recall at the moment—it is a long time since I read the report—what the specific nature of the evidence was. I do not know whether it was opinion evidence, pure and simple, or whether it had any stronger basis. I am afraid that I cannot make any further comments on that.

Mr. BOISVERT: How could we find out in a city those who are deterred from committing a murder? According to what you said yesterday and today you are basing your opinion on statistics issued by sheriffs and by doctors of penitentiaries, and they are referring to criminals after crimes were committed, and we may assume from those statistics that we cannot form an opinion to judge if it would be a good thing to abolish that penalty and have it replaced by life imprisonment. Now, I am getting to the first part of my

question: How could we know in any society the numbers of those who were deterred from committing murder on account of fear of being sentenced to death?

The WITNESS: I do not know.

The PRESIDING CHAIRMAN: That was gone into yesterday. Perhaps you were not here at the first part yesterday.

Mr. BOISVERT: No, I am sorry, I was not here.

The PRESIDING CHAIRMAN: Professor Sellin went into that in great detail.

Mr. BOISVERT: I am very sorry.

By Mr. Blair:

Q. Professor Sellin, on the basis of your studies on the subject of capital punishment, particularly in the United States, I wonder whether you would be in a position to indicate to this committee the extent to which a discretion is given to the court or jury to award capital punishment or a lesser sentence upon conviction for the charge of murder?—A. I thought I had brought with me some material on that because I just had a study made of what is a capital offence in the various states of the Union. It was my impression that this question of the discretionary use of capital punishment had also been included in that particular study, but I find upon examining the manuscript that it deals merely with a definition of capital offences. Therefore, I am not prepared to state offhand how the discretion is used, that is, the procedure. I do know that the mandatory penalty for murder has been removed in the federal code and in all states of the United States except Vermont. The states of Connecticut and Massachusetts removed the mandatory clause in 1951. There are, however, a number of states that have retained the mandatory clause for certain other offences. I do not have a complete list of those states or the offences involved, but I can give you some examples. For instance, the death penalty is mandatory in Alabama for first degree murder by persons serving a life sentence.

By Mrs. Hodges:

Q. How could a person commit a first degree murder while serving a life sentence?—A. He can with malice aforethought kill a guard or a fellow prisoner or kill a visitor to the institution if he has an opportunity.

Q. You do not let them out of jail to do that?—A. No. You will recall from yesterday's testimony that those who get out almost never commit murders. Then, kidnapping for ransom when the victim is injured, and also rape carry mandatory death sentences in Arkansas, train robbery in New Mexico, attempts on the life of the president or certain other high state officials in Ohio, attempt to escape prison, in Nevada, perjury in capital cases resulting in death, in Texas, and killing by stabbing or by poisoning in South Carolina.

Q. Does that mean not for killing by shooting a person?—A. Yes.

Q. Although the person is just as dead?—A. I suspect that in some of these cases you will find that the legislation is hastily drafted and someone proposes discretionary power in murder cases.

Q. Do they find, since shooting is apparently immune from the mandatory death penalty, that there are more murders by shooting down there?—A. Again, it would be impossible for me to answer that question. There are 48 states and I have no data at hand for most of them.

Q. It was this particular state?—A. In order to be able to discuss that, I would have had to make a particular study of that particular problem in the state of South Carolina, which I have not done.

By Mr. Blair:

Q. Just for the record I might mention that there is a summary of the American law on this subject on page 461 of the United Kingdom report. I take it from what you say that you have no data at the moment which would indicate the proportion of convictions for murder where the death sentence is imposed as opposed to life imprisonment in these states where discretion exists?—A. I have some, but I am not at all sure what they mean because they do not always seem to jibe with the situations claimed for other states. But, there was a study made some years ago based on Rhode Island and Massachusetts data. I can give the citation—I will not look for it now but I can give the citation when I see the transcript*—where comparable data were supplied for Rhode Island and Massachusetts, although not covering completely the same period: for Rhode Island (a state without the death penalty) for the years 1896 to 1927 and for Massachusetts for the years 1896 to 1916. In Rhode Island there were altogether 211 persons indicted for murder; of those 26 were convicted of murder in the first degree; 39 were convicted of murder in the second degree; and 66 were convicted of manslaughter. There were other dispositions such as committals for insanity, and so on, which we do not need to go into. What is interesting is the relationship of the figures of first degree and second degree murder and of manslaughter convictions. In Massachusetts, during 1896 to 1916 there were 405 persons indicted for murder; 23 were convicted of murder of the first degree which meant a mandatory death sentence; 150 were convicted of murder in the second degree which meant a mandatory life sentence; 81 were convicted of manslaughter. I think that this might be an indication of juries' deliberately convicting persons of murder in the second degree when they are unwilling to see the death penalty imposed even though the facts might merit a conviction in the first degree. In Rhode Island the figures would seem to suggest that there is less unwillingness to commit for first degree murder since the proportions are so much closer, 26 to 39, as compared 23 to 150. I doubt that, objectively seen, the types of murder were proportionately so different in these two nearby states. For the volume of the Annals to which reference has been made, the volume on Murder and the Penalty of Death—a Boston attorney, Mr. Herbert B. Ehrmann, prepared an article on the death penalty and the administration of justice and he uncovered some very curious data. He studied the disposition of capital cases in Suffolk County, which includes Boston, and Middlesex county which lies northwest of Boston. In Suffolk county he found that 3·9 per cent of those accused of capital crime were convicted of murder in the first degree, 20·2 per cent were convicted of murder in the second degree, and 30·4 per cent were convicted of manslaughter. In Middlesex county, however, 16·8 per cent were convicted of murder in the first degree, 20·4 per cent—a figure not much larger—were convicted of murder in the second degree, and 26·4 per cent were convicted of manslaughter. He says:

Explanations may be offered for these startling differences. Suffolk contains a larger percentage of more recent immigration; its racial, religious, and ethnic proportions of population vary substantially from those in Middlesex; its residents, on the whole, are on a lower economic level; they are less suburbanite; there is a tradition of "hanging" prosecutors in Middlesex. The very nature of these explanations, however, indicates the complexity of the problem. If citizens of the same state, living in adjoining counties, operating under the same administration of justice, differ so drastically in their attitude toward the death penalty, how is it possible to generalize for an entire state or nation? He also gives some data for six other counties. They look to me as if they were mostly in the western part of the state. There

* H. A. Phelps, "Effectiveness of life imprisonment as a repressive measure against murder in Rhode Island." *Journal of the Amer. Statistical Assoc.* 23: 174-81, March Supplement, 1928.

during the same period, 1925-41, out of 129 indictments for murder, 3 persons were convicted of murder in the first degree, 56 were convicted of murder in the second degree, and 23 were convicted of manslaughter. Again, those counties seem to follow more the pattern of Suffolk county rather than of Middlesex county. I am not sure that I have anything else to offer on that particular point.

Q. Do you think that it will be possible for the committee to find statistics which would indicate the percentage of murder convictions in which the capital sentence has been awarded and the percentage where life imprisonment has been awarded?—A. Oh, yes. I think so.

Q. Professor Sellin, I come back again to the first question I asked, and I invite your further comments on it, because I am somewhat concerned about any difference which may exist between your conclusions based upon statistical material you presented yesterday and the conclusions of the United Kingdom royal commission on capital punishment. This time I would like to direct your attention to paragraph 65, appearing on page 23 of the United Kingdom report, and also to the concluding sentence of paragraph 64, also on page 23:—

We agree with Professor Sellin that the only conclusion which can be drawn from the figures is that there is no clear evidence of any influence of the death penalty on the homicide rates of these states, and that, "whether the death penalty is used or not and whether executions are frequent or not, both death penalty states and abolition states show rates which suggest that these rates are conditioned by other factors than the death penalty".

It is my understanding that you went rather further yesterday in your interpretation of the statistics, and I wondered if you would indicate what extension you precisely made in your testimony?—A. I do not recall offhand to what extent I went further than that. When it comes to the study of the deterrent factor of the death penalty, I have endeavoured to keep rather closely to the statistical evidence, because I do not have other evidence of a nature that I would consider probative on the particular question. Do you recall any specific statement that I made yesterday.

Q. I do not want to put words into your mouth.

The CHAIRMAN: It is all right if you do. We are not in a court of law.

Mr. BLAIR: I think that your statement was to this effect, that statistics might or might not be conclusive, but they did indicate that the question as to the advisability of retaining the death penalty had to be determined upon other grounds.

The WITNESS: Yes, that is true. In so far as I can find no statistical support for the claim that the abolition of the death penalty generally and regularly causes an increase in homicide rates or that its reintroduction causes a decrease, I would be compelled to say that statistics prove that there is no relationship between those two facts. Either one of these things might occur, that is an increase or a decrease, in this or that particular state. It is obvious that that is true, but, if we examine the situation in each instance, we discover that there have arisen peculiar circumstances and conditions connected with social and economic life, population changes, the administration of justice, the presence or absence of organized criminality, or change in such forms of behaviour and so on, which seem to account adequately for these increases or decreases. To assume that the death penalty was the special factor which caused these changes seems to me inadmissible.

Mr. BLAIR: In view of Professor Sellin's wide study of this matter. The first question relates to a suggestion given in your testimony to the United Kingdom Royal Commission that one of the fears expressed by people about

the result of the abolition of the death penalty is that it might result in the population taking the law into their own hands and lynching persons who had committed heinous crimes. I wonder if you would be prepared to comment on the reasonable prospects of such things occurring.

The WITNESS: There were no lynchings in the United States last year or the year before last. In recent years before that, lynchings have occurred at increasingly rare intervals. Twenty-five to 30 years ago there were many lynchings every year, but the rate of lynchings has gone down. The lynchings occur in the death-penalty states; they practically never occur in the north; they have been in the past primarily a southern phenomenon. They have reflected the relationships between the coloured and white races in the south. It is true that on occasion a white man has been lynched. That was more true a century ago or, shall we say, 75 years ago, than in more recent decades, but I do not know from the statistics and I have not studied the individual cases enough to know whether by "white" was meant native southern white or whether it meant white immigrant, someone who came from below the border or abroad.

Mrs. SHIPLEY: Or north of it.

The WITNESS: It might have involved somebody from the north of the United States occasionally; it is conceivable. Many of these lynchings have taken place, not because of murder but in connection with rape or accusations of rape and, in the more distant past, because a negro failed to step off the sidewalk or failed to observe some of the well-established relationships of master and servant or oldtime slave, which remained in people's minds and caused this reaction on the part of the public. Therefore, I think that the fact that these lynchings have greatly declined and now perhaps have permanently disappeared indicates a changing relationship between the races in the south, and greater attention paid to the civil rights and the protection of individual rights. Every year there have been lynchings prevented by the officials. If one reads the history of lynchings of some years ago it suggests that in many instances those who were entrusted with law enforcement, sheriffs and jail-keepers and so on, so sympathized with the mob that little, if any, attempt was made to prevent the removal of a prisoner from jail. It is curious that in many instances such lynchings occurred in the cases of prisoners who were indicted, were awaiting trial, and who undoubtedly would have been convicted and executed by the state, indicating again the character of the antagonism existing between these racial groups. Considering history, the disappearance of lynchings and the fact that the highest homicide rates are in these very states where lynchings were most frequent and that the death penalty existed in those states, I do not see that there is any reason to believe that if life imprisonment were substituted for the death penalty in Canada—because it is not a question of removing punishment for the crime—that would lead people to take the law into their own hands. They would obey the dictates of the legislature in this connection and consider that the new punishment would be properly imposed. There have, I assume, been persons convicted in Canada of murder who had their sentences commuted, and persons who were convicted of a lessened degree of homicide for some reason, in cases where the public regarded such leniency as an affront to justice, because public opinion demanded the death penalty, yet I have heard of no mob breaking into jails in cases of that type and attempting to lynch such persons.

The PRESIDING CHAIRMAN: Have they ever apprehended and prosecuted people who have committed lynchings?

The WITNESS: Yes, indeed, in recent years there have been many prosecutions of that type, and some convictions.

Hon. Mrs. HODGES: What is the sentence for lynching?

The WITNESS: It carries a discretionary death penalty in Alabama, Indiana, Kentucky, South Carolina, South Dakota, Texas and West Virginia. In some of the other states it would be considered murder in the first degree, and it would fall under the general definition of murder.

By Mr. Blair:

Q. Professor Sellin, when you were before the United Kingdom royal commission, I believe it was the chairman who asked this question, which occurs on page 673 of the minutes of evidence, question 8885. The question is:

If it were true that the deterrent effect of the death penalty is greater in the case of vocational criminals than in the case of other sorts of murderers, then there might be a case for abolishing the death penalty in some countries but not in others, according to the type of murder which is most frequent. Do you know of any statistics which would show separately murders committed by criminals in the course of committing another crime and such murders as passionate murders?

A. I do not have any such statistics with me. I know that they exist, but I could not offhand give any in that connection.

Q. You are not able to enlarge upon that further at this time? Professor Sellin mentioned yesterday that more and more executions tended to be conducted in secret with very little publicity given to them, particularly in the United States. I wondered whether he was prepared to comment on the suggestion that we have had here that the execution of the death sentence has a detrimental effect on the community in which the execution occurs.—A. I do not believe that I can answer that question. The word "detrimental" would require a definition. I refer to the statement in which I reported on a study we made in Philadelphia to find out whether or not an execution had any effect upon homicides in Philadelphia. We selected five cases which were drawn from different years, cases where the crime had been committed in the city, and there had been great publicity about the crime. One of these cases was a bank holdup in which four young men were involved, in the northern part of the city. One of these men sat in an escape car several blocks away from the bank. After the successful robbery, the three offenders left the bank, but the alarm was sounded immediately and the police came upon the scene and evidently captured the man in the car and had the man under arrest before one of these other men who had a gun shot back at a watchman or policeman—I forgot the details—who was shooting at them. As I recall it the distance was rather great and that this return of fire on the part of the bank robber was more accurate than one could expect, and probably accidentally so, but the person was killed. All of these four men were executed the same night, and in the leading evening paper in Philadelphia at that time, the *Evening Public Ledger*, a full first page spread was carried describing the offence, giving biographies of the men involved, and describing the execution, so that no one in Philadelphia who could read could possibly have escaped this dramatic display showing that these four men were executed. The other four cases were somewhat of the same character. The crimes were all spectacular and highly publicized. So, we said, let us see whether these executions had any effect on homicides in Philadelphia. We took the dates of these five executions, then we went to the coroner's office and to the police and we secured the dates of every homicide committed in Philadelphia for sixty days prior to and sixty days after the execution for each one of these five executions. We said to ourselves that obviously the death penalty would not deter people from committing negligent manslaughter; it has furthermore nothing to do with justifiable or excusable homicides. So, we eliminated these offences completely, and from the study of the other cases we tried to eliminate those that were

clearly manslaughter cases. I am sure we were not successful in actually arriving at only those cases which would, under the definition of the law, be regarded as murder in the first degree, but at least we made no conscious selection. Then we marked on the calendar, with the execution date in the middle, each one of these homicides. We then attempted to find out if there was any kind of lag or delay after the execution so that one might say that the impression of the execution had caused somebody—even if they were few—to desist, at least temporarily, from committing murder. We found nothing. In one instance, as I recall it, there was an increase of homicides immediately after the execution. In another case there was a decrease. In the others there was no evidence of either. I mention this study, which is the only one of the kind so far made, to indicate that by this method, assuming the deterrent effect would be greatest in the community where the whole affair was best known and where people associated with the case had relatives and acquaintances and an interest in the case, we discovered no observable effect of executions on the frequency of homicides. It may be that we had been unable to, shall we say, select cases in such a way that no error crept in because we had to include cases that we did not know would be murder in the first degree, but we did the best we could under the circumstances and came to this completely negative result.

By Mr. Blair:

Q. The other point I had in mind was, assuming there is a benefit from the observable reaction of the execution or the death sentence, have you any comment to offer on the countervailing force of morbidity among the public arising from undue interest in the execution in a community?—A. In view of the fact that there is little publicity given to executions—now I am speaking on the basis of American experience—I think that most people do not know when an execution occurs. When it comes to something like the execution of the two kidnappers of a year or two ago, when every daily paper carried pages full of the crime, certainly the public learned about the existence of the death penalty. Depending upon their attitude to the death penalty, I suppose they would sympathize with the decision to execute, or feel that it was a degrading thing to give all this publicity to the execution. But, how can one measure these effects? Here we are in the realm of opinion. I have one comment that may show you the effect of executions on prisoners. Henry A. Geisert published a book in 1939 entitled "The Criminal, A Study". It is a work by a Catholic chaplain at one of the mid-western penitentiaries. He says:

...as far as my observations go, if arousing bitter feelings among prisoners is a deterrent to crime, the advocates of execution certainly have the right of way. And this resentment is pretty much the only sentiment I find aroused, except admiration for the 'dead game sport' when the press relates how the guilty man met his doom in a spirit of bravado. The pending execution of a criminal in New York caused a lively gamble among his friends in our prison, which was far removed from the place of execution...

Remember that he is speaking of a mid-western penitentiary.

Wagers were laid regarding the courage wherewith he would go to his death. Following the day of execution, the papers were minutely scanned to learn which opinion won. Again, while the strength or weakness with which a man faced this dreadful ordeal constituted about the only object of intense interest among our prisoners, yet they resented the execution of a fellowman as brutal butchery. A man who bravely meets death on the scaffold or in the electric chair, becomes a heroic figure among a vast horde of criminals, if my experience may act as a guide.

Hon. Mr. ASELTINE: Mr. Chairman, yesterday I was at the end of the line and I had to leave before I had an opportunity of asking any question. This morning I also appear about the end of the line and, as a consequence, most of the questions I have, have already been put. But, there is one matter that I would like to have dealt with. That is, in Canada, if a man commits murder, he knows if he is convicted he is going to suffer the death penalty. Now, in the United States, a man can be convicted of first degree murder in which case he suffers the death penalty.

The PRESIDING CHAIRMAN: Not in all states.

Hon. Mr. ASELTINE: In cases where it is mandatory. But, he can also be convicted of second degree murder. We have not in this country, as far as I know, anything of that nature at all. It seems to me that when a man in the United States contemplates the commission of a murder he has more than a 50-50 chance of getting a life sentence and not suffering the death penalty at all. Therefore, I cannot see that the figures which have been presented to us by the professor have very much bearing on the situation we have in Canada at all.

The PRESIDING CHAIRMAN: Is that your question?

Hon. Mr. ASELTINE: Yes, I would like him to comment on that.

The PRESIDING CHAIRMAN: It is more of a statement.

Hon. Mr. ASELTINE: He has presented certain graphs and figures, and I would like him to comment on what I have stated. I will put it as a question. Do the conditions in the United States not vary so differently, or so considerably from what they are in Canada, that the figures which you have given us and the graphs which you have appended cannot apply to any very great extent in this country?

The WITNESS: I am afraid that I do not know enough about Canada to make a comparison because my studies have been entirely limited to the United States and a few of the European countries. I have presented no figures whatsoever from Canada, nor have I enquired into the effect of the death penalty in Canada. I would have to ask a great many questions myself before I were able to answer that statement.

Mr. FAIREY: I was going to ask some questions following the questions asked by Mr. Fulton. This may have been asked when I was not here. Would the professor like to comment on the statement made by Chief Mulligan of Vancouver, who appeared here, when he expressed concern about the possibility of the abolition of the death penalty and its effect upon the arresting officers. He said that he felt that officers in the discharge of their duties—

The PRESIDING CHAIRMAN: We did discuss that yesterday at great length, but perhaps Professor Sellin would like to make a further comment.

The WITNESS: I can only add one thing in regard to that. A few years ago when Austria abolished the death penalty some of the strongest arguments presented for abolition of the death penalty were presented by the police of Austria because they said: We feel, if there is no death penalty, there will be no necessity for a prisoner to attempt to kill an officer in order to stop being arrested. This, in a sense, is also based on the assumption of the great deterrent effect of the death penalty. In that respect the police officers of all nations seem to agree. But, the Austrian police did not take the attitude of the British police, for instance, before the Royal Commission on Capital Punishment. When you think of the countries that have abolished the death penalty in Europe, they do not seem to be afraid that as a result of it more policemen are going to be killed. I think these matters are tied up greatly with the whole cultural setting and the condition of the nation.

Mr. SHAW: It was impossible for me to be here yesterday afternoon and I had intended to ask this: Professor Sellin, I was intrigued by this set of graphical diagrams, I to VII, indicating the homicide death rates in American states; in some states there were death penalties and in some there were not. With respect to this gradual decline in the incidence of death rates, have you indicated what, in your belief, are the reasons for this constant decline as shown through all those diagrams? Would you comment on that?

The WITNESS: I do not know if I commented on the specific reason for it and I am not sure I could give more than an extremely general answer. I think, in part, there have been changes—improvements—in our economic and social conditions in the United States over a period of time now which are responsible for the result you mention.

The PRESIDING CHAIRMAN: We read statements made all the time in newspapers that crime is on the increase. That is a question I was going to ask yesterday.

Mr. SHAW: You referred to the general improvement in economic and social conditions. Could you think of any other factors that stand out as a possible reason for this? Would you agree then that maybe better law, or stricter enforcement of the law, might be a factor?

The WITNESS: I think that on the whole we now have less organized crime in the United States than we had, obviously, in the 1920's or the 1930's, and the highest crime rates tend to be pretty well in the larger cities, so that the larger the city the higher the crime rate, not necessarily so much in criminal homicides as in robbery and burglary offences, for instance. And, remember that a great many of what we call murders occur in connection with breaking and entering, holdups, and so on, so that if you have a very high crime rate for robbery there is a likelihood, I should think, that the proportion, or at least the actual number of killings occurring in connection with robbery, would be found where you have a high robbery rate and burglary rate, and the big cities lead in this respect.

In so far as there has been a decline in that type of crime, it is bound to be reflected in the homicide rate somewhat. Then, of course, since homicide death rates include all the gangster killings, when there is a decline or a change in the nature of organized crime that it is bound to be reflected in the homicide rates. Since the depth of the depression and the end of the prohibition era, there has been a downward trend in the homicide rate, as reflected in these statistics. You will note also from the diagram something to which I did not call attention yesterday, that while in each single group of states the level of the rate is about the same, there are differences in that level. When you take, for instance, Michigan, Indiana and Ohio, the level runs somewhere between 3 per 100,000 and 10 per 100,000, while in Maine, New Hampshire and Vermont it runs somewhere between $\frac{1}{2}$ per 100,000 and $3\frac{1}{2}$ per 100,000. But, while the level varies, the trends are about the same.

The PRESIDING CHAIRMAN: Ladies and gentlemen, would you wait for a moment while we have a short session *in camera*? We will meet this afternoon in Room 368, our regular meeting room, at 4.00 p.m. There are other members of the committee who have questions to submit, and I am not going to deprive them of that opportunity, if they will reserve their questions for four o'clock.

The committee proceeded *in camera*.

JOINT COMMITTEE

AFTERNOON SESSION

The PRESIDING CHAIRMAN (Mr. Brown, Essex West): This morning we were discussing capital punishment with Professor Sellin. I believe that Miss Bennett had a question to ask.

Professor Thorsten Sellin, Chairman, Sociology Department, University of Pennsylvania, recalled:

Miss BENNETT: Thank you, Mr. Chairman. Professor Sellin, I was greatly disappointed that I was unable to hear your discussion yesterday morning but, having that in mind and your comments this morning, do you think that in the development of our society we have arrived at the point where we should undertake the experiment of the abolition of capital punishment?

The WITNESS: I should think so, considering your low homicide rates. Many countries with higher homicide rates have abolished the death penalty, but it is obvious that this is a question which depends on public opinion in the country. If a larger proportion or, shall we say, if the majority in a country are not convinced that it is wise to abolish the death penalty, the only way is to convert the majority into a minority by public education. I suspect that the vast majority of people who hold opinions either for or against the death penalty do so on grounds which are not supported by any real evidence, but by traditions which they unquestioningly assume to be right. I do not know how far a legislative body can go in educating public opinion. There certainly have been instances when legislatures have themselves been convinced of the desirability of a policy in any particular field and have proceeded to adopt it, taking steps to inform the public of the reasons for it, presenting the arguments for the change in policy and expecting that that would change the opinion of the public.

The PRESIDING CHAIRMAN: Does any other member of the committee have a question? Mr. Blair.

Mr. BLAIR: A further question arises from the question asked by Senator Aseltine this morning. In the statistical tables and graphical diagrams presented yesterday, comparisons were made between states which had abolished the death penalty and states where the death penalty was retained. Senator Aseltine posed the question as to whether the fact that, in most of the states with the death penalty, its award was discretionary would have had any effect on those figures, and whether there might have been a lower rate of homicide in those states had the death penalty been mandatory. I wondered whether you would like to comment further on those tables.

The WITNESS: Let us look again at the diagram which compares Rhode Island, Massachusetts and Connecticut for the period 1920-48. Rhode Island has no death penalty and Massachusetts and Connecticut, being states of a rather similar character in so far as industry, population and so on are concerned, had a mandatory death penalty. If one observes the curves of the homicide rates for those three states, it would seem that one would come to the conclusion that they moved, all three of them, in the same general direction and within the same approximate limits. Now, if one takes the states of Michigan, Indiana and Ohio, Michigan having no death penalty and Indiana and Ohio having a discretionary death penalty, you get the same general picture. In all three states you have the same general trend and level of the homicide rates.

Hon. Mr. ASELTINE: In Canada we have no second degree as you have in the United States. That is what is bothering me.

The WITNESS: These are only general homicide death rates. Whatever the degrees may be, whatever the actions of the court may be in assessing death penalty or life imprisonment, where they have discretion to do so, and in states where they had no discretion to do so, as in Connecticut and Massachusetts, nevertheless the rates move in a manner which suggests that the death penalty had nothing to do with any change in the homicide rate. I should think that these rates suggest that homicide is related to something else and that one would have to study what has happened in the economic and social field, urbanization changes, the existence of peculiar conditions during certain periods to account for now an upsurge and now a drop in the rates.

MR. SHAW: It was agreed earlier, was it not, that those graphical diagrams would be included?

THE PRESIDING CHAIRMAN: They will follow the statement on capital punishment to be appended to the evidence. Are there any further questions? If not, shall we proceed to the question of corporal punishment?

CORPORAL PUNISHMENT

You have before you, or at least you have had placed in your mailboxes, a brief prepared by Professor Sellin on the question of corporal punishment. If it is your pleasure, I will ask Professor Sellin if he would either read or deal with this brief in such manner as he may deem fit.

The WITNESS: I think that, in order to save space in your proceedings, it would be simple for me to read this statement and in connection with the diagram explain perhaps a little more fully at that point what the diagram means.

May I say, first of all, that I have made no particular study of corporal punishment. We do not have it in the United States as a punishment for crime except in the little state of Delaware, which is one of the smallest states of the union. We no longer have it in penal institutions as a punishment for disciplinary offences. I am speaking of flogging in this particular connection. There may be other punishments that might be regarded as corporal and occasionally found in some institution which is not regarded as modern but an inquiry made a few years ago by questionnaire and which brought replies from some 50-odd prison wardens in the largest institutions of the country, the results of which were published in an issue of the "Prison World", a magazine issued by the American Prison Association, revealed that none of these institutions at least used whipping in connection with any disciplinary punishment. The only reason why, at the time when I was asked to come up and talk to you especially about capital punishment, I suggested that I would be glad to discuss corporal punishment a little was that I noticed in your bibliography no reference, and in the testimony before your committee no reference to the only two research studies that I know of which deal with the question of the deterrent effect of flogging. The only purpose for preparing this statement, was to bring that information before you. I do not, therefore, claim that I can discuss corporal punishment in general in any of its various aspects with any great profit either to myself or to you, but these two studies may be of interest to you.

In discussing corporal punishment, I propose to deal only with two problems. It is claimed by those who support this punishment that it is an effective deterrent to further criminality on the part of those who have been whipped. It is also said that the fear of being subjected to corporal punishment deters people in general from the commission of offences which carry that penalty. These arguments illustrate the two aspects of deterrence, the individual and the general.

Research on either of these aspects is extremely rare. Fortunately, however, there are two interesting studies, which are rather recent and deal directly with the two problems mentioned. One of them was made by Professor Robert Graham Caldwell about ten years ago, when he was a member of the faculty of the University of Delaware; the other was published in 1939 by Mr. E. Lewis-Faning, of the statistical staff of the British Medical Research Council. Professor Caldwell was in a unique position to study the history and the effects of the whipping post in the state of Delaware, the only state of the Union which has retained it for a number of common law felonies. His Book, *Red Hannah. Delaware's Whipping Post*, is the first and only adequate study of this archaic form of punishment for crime in Delaware. (1) Mr. Lewis-Faning's study deals with the relationship between the rate of robberies with violence, known to the police of England and Wales, and flogging as a punishment during the period 1864-1936. So far as I know it is the only statistical study of its kind based on English experience; it was prompted by certain statements made in the report of the so-called Cadogan Committee, a departmental committee which examined the question of corporal punishment in England and issued a report in 1938. I shall present the findings of these two researches as briefly as possible.

1. How do prisoners who have been punished by whipping behave afterwards?

Deleware's statutes contain twenty-four crimes which may be punished by whipping. In all but one of these offences, wife-beating, a prison sentence must also be imposed, if corporal punishment is used; the wife-beater may instead have to pay a fine. At least one of the crimes is archaic—wrecking—but the others include such offences as breaking and entering a dwelling at night with intent to commit a crime other than murder, rape or first degree arson; certain kinds of arson; robbery, first offence; grand larceny, etc. Seven of the offences have been added to the statutes at different times between 1901 and 1925, and 32 whippings (24 of them wife-beaters) have occurred for four of these crimes between 1900 and 1942, the last year for which data are available in the Caldwell study.

During 1900-1942, there were 7,302 persons convicted in the three counties of Delaware of crimes for which whipping might have been ordered, but only 1,604 (22 per cent) were whipped. Actually these 1,604 cases represented 1,320 persons because 169 were whipped twice (12.8 per cent), 41 three times (3.1 per cent), 7 four times and 3 five times. Eleven hundred whippings were administered for larceny, 287 for breaking and entering, 172 for robbery and 45 for other offences. Of those whipped 68.1 per cent were Negroes, 24.7 per cent whites and 7.2 per cent of unrecorded racial origin.

It is interesting to note that in spite of the fact that seven corporal offences were added to the statutes during the period studied, the courts evidently changed their attitudes towards the penalty considerably. During the first decade 1900-09, 84.2 per cent of those convicted of robbery were actually whipped; 63.1 per cent of those convicted of breaking and entering, 56.1 per cent of those convicted of larceny, and 30.3 per cent of those convicted of other corporal crimes were similarly punished. During the last decade, 1933-1942, however, the corresponding percentages were 35.9, 12.9, 6.0 and 9.5. From 1900, when 70 per cent of those convicted were whipped to 1942 when only 6.7 per cent were so punished the drop is extraordinary and can only mean an increasing reluctance to inflict this punishment. While I have no data for the years since 1942, the rarity of Philadelphia's newspaper notices announcing whippings in Delaware suggests that this trend has not changed. A part of the reason may be an act of 1941 which eliminated corporal punishment for petty larcency (goods of under \$25 in value).

(1) See also his "The deterrent influence of corporal punishment upon prisoners who have been whipped," Amer. Sociol. Review 9:171-7, April, 1944.

Dr. Caldwell examined the charge sometimes made that negroes were discriminated against in the use of corporal punishment. He investigated the race of the 510 prisoners who in 1940-42 were convicted of crimes for which corporal punishment was a discretionary penalty and found that 3·5 per cent of the whites and 14·5 per cent of the negroes were whipped. He pointed out, however, that the proportion of recidivists was much higher in the negro group and that this might well account for the seeming discrimination.

The part of this research which is of greatest concern to us is the study of the criminal careers of prisoners who have been whipped. It was found impossible to cover in that study the entire period examined or the entire state of Delaware; records were so defective that only in New Castle county, in which the city of Wilmington is located, could adequate information be secured and only for the period beginning in 1920. In order to test the effect of the lash on prisoners who had been whipped the records of prisoners so punished from 1920 to 1939 inclusive were followed through the year 1942. Dr. Caldwell located data about the 320 different prisoners, all of whom had been whipped at least once; 73·8 per cent of them were negroes.

The conclusions drawn by Dr. Caldwell from this part of his research may be quoted from his work:

"(1) Criminals who were convicted of crimes for which they might have been whipped but were not, tended to be better educated, younger, less hardened in criminal habits, more often white, and more often found guilty of crimes against property (rather than crimes against the person) than those who were whipped.

(2) The whipping of criminals did not effectively deter them from again committing a crime. Not only were many such persons (61·9 per cent) after their first whipping convicted of crimes, but a large number of them (48·8 per cent) were found guilty of major offences. Moreover, a high percentage (41·9 per cent) were convicted of crimes for which the laws of Delaware prescribed the penalty of whipping, and many (30·9 per cent) were found guilty of having committed such crimes in Delaware, and not in some neighbouring state.

(3) The subjection of criminals to more than one whipping was not effective in changing their criminal habits. After having received at least two whippings, many (65·1 per cent) were again convicted of some crime, and a large percentage (57·1 per cent) were found guilty of major crimes.

(4) Negroes who had been whipped showed a greater tendency to continue their criminal careers than did whites who had been similarly punished. After their first whipping, 65·3 per cent of the negroes, as compared with 52·4 per cent of the whites, were again convicted of some crime. . . .

(5) The use of imprisonment as a punishment for those who might have been whipped but were not proved ineffective in deterring them, after their release from prison, from again committing crime. Of such persons who were imprisoned during 1928, 1932, 1936 and 1940, 61·1 per cent were again convicted of some crime.

(6) Probation was used with better results than imprisonment in the handling of some of those who might have been whipped but were not. Of such persons who were placed on probation during 1928, 1932, 1936 and 1940, 37·5 per cent were again convicted of some crime.

(7) The amount of recidivism was greater among those who had been whipped (66·8 per cent of those whipped during the period 1920-39, inclusive, and 68·5 per cent of those whipped during 1928, 1932, 1936 and 1940) than it was among those who might have been whipped but were not (52·3 per cent of those convicted in 1928, 1932, 1936 and 1940) and among those who might have been whipped but instead were only imprisoned (61·1 per cent of

those convicted in 1928, 1932, 1936 and 1940); and there was the least amount of recidivism among those who might have been whipped but instead were placed on probation (37·5 per cent of those convicted in 1928, 1932, 1936 and 1940).

It must be recognized, however, that this comparison is somewhat obscured by the combination of a number of factors. There was, in the first place, the element of selection in the processes of apprehension, prosecution and punishment. Not all persons who committed crimes for which they might have been whipped were apprehended and prosecuted. It may be that the most skillful and hardened in crime eluded the law enforcement agencies, and so their activities were not reflected in the police, court and prison statistics. Furthermore, there was the tendency, as revealed by the examination of the prisoners' criminal records, of not whipping the better trained, the younger, and the less hardened in crime. This tendency possibly accounts to some extent for the lower recidivism among those who were not whipped.

In addition, it should be remembered that those who were whipped also received terms of imprisonment as part of their sentence, so there is the possibility that both these methods of punishments affected the subsequent behaviour of the prisoners. The problem is further complicated by the fact that some of those who were whipped were not only imprisoned but also fined, and that many of those who were whipped had previously been imprisoned.

Finally, there were other more subtle factors, many of which were not involved in the processes of law enforcement, that greatly affected, in varying degrees, both those who were whipped and those who might have been whipped but were not. The love of dear ones, the hatred of enemies, the encouragement of friends and relatives, the security or insecurity of economic and social position, the attitudes of guards and wardens, and many other influences played an unending stream upon the lives of those whose criminal careers were statistically analyzed in this study.

All this, of course, is just another way of saying that human beings do not live in a statistical vacuum and that each of us is a product of a multiplicity of environmental and hereditary influences. Even a slight insight into these congeries of human relationships could have been achieved only by an intensive case study of each prisoner. Nevertheless, despite the complexity of the problem, the available statistics do seem to indicate that neither whipping nor imprisonment effectively deterred those who had been so punished from again committing crimes . . .¹

We have seen that Delaware uses the whipping post chiefly in dealing with robbery, breaking and entering, and larceny. I hesitate even to cite statistics of these crimes known to the police in Delaware and in contiguous states, because of the great differences between these states. Delaware's one large city has only a little over 100,000 inhabitants and the other four Delaware cities that report data for Uniform Crime Reports, issued by the FBI have fewer than 10,000 each. Around the state lie the more populous and urbanized states of Pennsylvania, New Jersey and Maryland, all of which have metropolitan cities and different social and economic conditions. In 1950, however, comparing Delaware's robbery rate with that of Maryland—these are urban rates—the former was 36·3 per 100,000 population and the latter 49·0. The burglary-breaking and entering rates were, correspondingly, 357·5 and 240·7, and the larceny rates 1,013·9 and 566·7. If we look at the Delaware rates alone and consider that the city of Wilmington is the chief source, we find that the rates for these three crimes are higher in Delaware than in the group of 123 cities in the United States which have a population of between 50,000 and 100,000 inhabitants, but, except for the larceny rate, lower than the rates of the group of 67 cities with between 100,000 and 250,000 inhabitants.

¹) Robert Graham Caldwell, *Red Hannah, Delaware's Whipping Post*. xi, 144 pp. Philadelphia: University of Pennsylvania Press, 1947; pp. 80-82.

New Jersey has much lower rates for these three crimes than does Delaware and Pennsylvania rates are lower, too, except for robbery. For the reasons already stated, none of these comparisons can be considered as of any significance for testing the value of the whipping post in Delaware.

II. Does flogging have a deterrent effect on the general population?

After its examination of the use of corporal punishment in England, the Cadogan committee recommended that it be abolished. The committee recognized that "a sentence of corporal punishment is clearly not reformatory, and its retention could therefore be justified only on the ground of its value as a deterrent—either in preventing the individual offender who suffers from it from repeating his offence, or in discouraging others from committing similar offences." "It would be out of accord with modern theories of penal treatment to justify the retention of any form of punishment merely on retributive grounds."¹

The conclusions of the committee were based on hearings as well as on studies of the trends of criminality punishable by flogging and studies of 440 persons convicted of robbery with violence during 1921-30 inclusive. The subsequent conduct of these persons did not show that those who were flogged did any better—indeed, the committee felt that they did worse—than those who were not flogged.

Mr. Lewis-Faning, in the article to which reference was made at the beginning of this statement, examined the findings of the committee in the light of modern statistical principles and, besides, made a study of his own of the crimes of robbery with violence in England for the period 1864-1936, in order to determine if the rates for this crime were affected by corporal punishment.

With respect to some of the generalizations about flogging at which the committee arrived ("There is a tendency to make greater use of corporal punishment in the case of persons in the age groups 21-30 and 31-40"; "There is a slight tendency on the part of the courts to impose longer sentence of imprisonment in cases where corporal punishment is not ordered"; "In cases where the offender has a more serious criminal record corporal punishment was imposed more freely"; "Corporal punishment may be a less effective deterrent for persons in the higher age groups"; "The subsequent record of those sentenced to corporal punishment is worse than that of those not sentenced to corporal punishment, except as regards those who previously had the worst criminal record.") Mr. Lewis-Faning, after applying standard tests of statistical significance to the data upon which these generalizations were based arrived at the conclusion that "the only statistical conclusion come to by the committee the validity of which is beyond question is that corporal punishment is imposed more freely on persons having a previous record of serious crime."⁽²⁾ All other conclusions arrived at by the committee were not statistically significant and could have been due to chance.

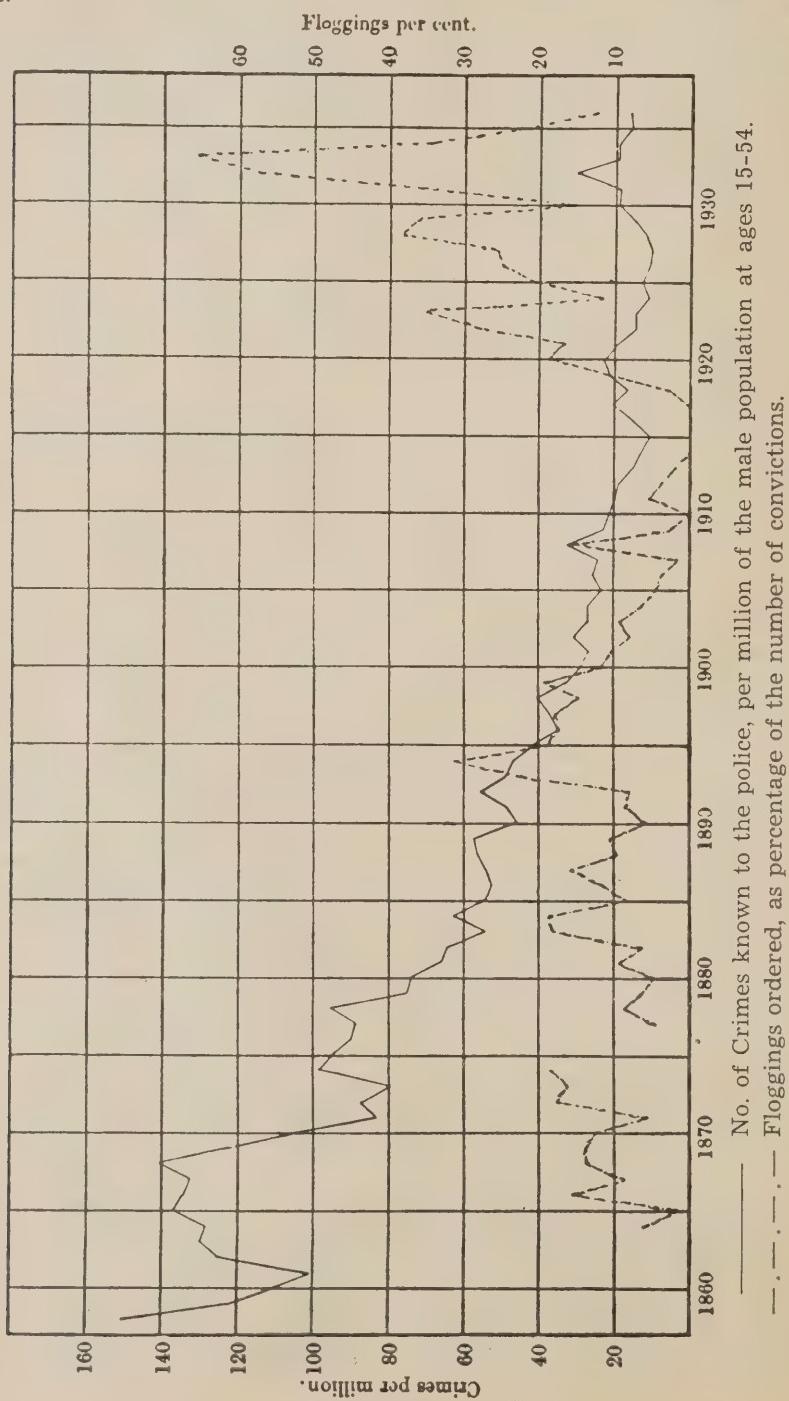
For the purpose of observing the relationship between robbery with violence and flogging as punishment for this crime, Mr. Lewis-Faning computed the annual rates of such robberies per million population (15-54 years of age) from 1864 to 1936, using as a basis the offenses known to the police, which he recognized as furnishing a sensitive index to this particular form of criminality. Expect for the years 1875-76, 1910, and 1915-16, he was also able to secure statistics on the number of floggings ordered annually for robbery with violence and constructed a diagram which shows the curve of these floggings, expressed in percentages of convictions. The assumption could be made that if floggings have a deterrent effect on the general population or, in this case, on prospective

⁽¹⁾ Home Office, *Report of the Departmental Committee on Corporal Punishment*. (Cmd 5684) vi, 153 pp. London: His Majesty's Stationery Office, 1938; p. 60.

⁽²⁾ E. Lewis-Faning, "Statistics relating to the deterrent element in flogging." *Jour. Royal Statistical Society* 102: 565-78, 1939; p. 571.

robbers, the greater the percentage of convictions in which floggings were ordered, the greater would be the risk of being flogged and, therefore, the greater the hesitation before engaging in such a crime.

The accompanying diagram graphically portrays Mr. Lewis-Faning's results.



I call your attention to this diagram which is before you; it appears in the article we are discussing.

The PRESIDING CHAIRMAN: Is it agreed that the diagram become part of the record at this point?

Agreed.

The WITNESS: You will note that the heavy black line shows the number of crimes of robbery with violence known to the police, per million of the male population at ages 15 to 54. It is a crime which is peculiar to males. The lower dotted line you notice is broken in two or three places which is due to the absence of figures for a total of five scattered years. It shows the proportion, or the percentage, of sentences for robbery with violence in which floggings were ordered. You will note the curious fact that from the 1870's on, except for a peak in 1894, the proportion of flogging sentences to convictions was very low, and that beginning with about 1920 these proportions begin to rise very greatly, although previous to that the crime rate for robbery with violence had been constantly declining, Mr. Lewis-Faning, therefore states:

During the period 1864-1936, there is no evidence that the infliction of corporal punishment has in any way acted as a deterrent to prevent others from committing... (robbery with violence). Rather, does it appear that there is no relation at all between the number of floggings and the amount of crime in the same year, the previous year or the subsequent year. Broadly, the amount of this type of crime has fallen from 70 cases per million of the population in the 'sixties to less than 20 cases per million since 1921. The amount of flogging, on the other hand, which before the war (the first world war) only once, in 1894, exceeded 20 per cent of the number of persons convicted, has since 1921 only three times been below this figure. Five times has it been between 30 and 40 per cent and twice between 55 and 65 per cent. This seems to indicate that as robbery with violence has decreased in frequency, so it has become more detestable and has been treated with more severity. (p. 578).

And, as in answer to the committee's view that retribution cannot be defended as an aim of corporal punishment, Mr. Lewis-Faning adds, "Far from being imposed for its deterrent element which it has never possessed, in reality, and to a greater degree than before the war, it is being imposed as a retributive," the very reason which the Cadogan committee said was not admissible. The committee had come to the conclusion that only if flogging could be proved to have deterrent value could it possibly be justified.

Ten years after the publication of the Cadogan report, England abolished flogging as a punishment for crime.

My own view of corporal punishment was expressed in a foreword to Professor Caldwell's book, which said that the use of the lash "rests on the belief that wrongdoing should be paid for by physical pain", taken out of the culprit's hide; that physical suffering is a correction that even the simplest mind can understand and try to avoid in the future; or that it is a kind of solvent cleansing the spirit and rendering an evil mind good. Thus the ingredients of vengeance, deterrence, and reformation have been blended with a dash of expectation that the general public, knowing the threat of pain, would desist from violations of the law.

"Whipping is still occasionally defined by the law of a few nations as a punishment for crime, but in modern times the tendency toward its abolition has been marked. Modern psychology has punctured the belief that physical violence practised on a person can render him a better man; in deed, it has proved that it usually makes him worse. And if a man is not made better by

punishment, his future actions will hardly be governed by it. The deterrent power of the lash is therefore absent. Nor has any evidence been adduced to show that whipping frightens others into law obedience. Such an effect can hardly be postulated when one considers the nature of this penalty today. Finally, it has been alleged, and is probably true, that whipping has a brutalizing effect on those who inflict it. The beating of any defenseless person cannot but leave a mark on the executioner.

"What then remains? Vengeance. If the whipping post neither deters nor reforms... nor scares the prospective offender, its only purpose is to exact vengeance, a sordid motive for punishment which has no place in a democratic penal code. As if conscious of this, the legislator usually hides the whipping post inside the walls of the prison, safe from public gaze, like the family skeleton in the closet.

"Enlightened democracies recognize today that penal legislation must protect society against crime by returning the offender to society better able to resist the pressures and temptations of the workaday world, and that if this cannot be done by any known methods of treatment he must be given prolonged care until he can be released without danger to his fellowmen. In this scheme, sympathetic understanding and treatment must govern, not vengeance. The whipping post belongs to the trapping of a past age or to the tyrant's arsenal of weapons. Veneration for tradition and the cult of the antique have no place in modern penal law any more than in the workshop, the laboratory or the farm. The law must keep abreast of the growth of scientific knowledge and the demand for efficiency and positive results that stamp our material culture."⁽¹⁾

The PRESIDING CHAIRMAN: That is the presentation by Doctor Sellin. Have the committee members any questions?

Mrs. SHIPLEY: Before we start the questions, could I have a word defined? When Professor Sellin uses the term "flogging" I am assuming that he means what is called strapping, paddling, lashing, all forms of punishment of that kind?

The WITNESS: That is correct. I used the term "flogging" or "whipping" because it is called whipping in Delaware and flogging in England, and those are the only two states with which I dealt in this report.

By Hon. Mr. Aseltine:

Q. Has the professor anything to say about flogging prisoners after they are committed to a penitentiary, for infractions of the rules?—A. It is disappearing in the United States.

In the late thirties, it was reported in the volume on Prisons of the Attorney General's Survey of Release Procedures that whipping with the strap or the lash was used in seventeen prisons. Most of them were in southern states (Alabama, Arkansas, Delaware, Kentucky, Louisiana, Mississippi, Tennessee, Texas, and Virginia), but it was reported also in use in some road camps operated by the San Quentin prison in California, in two of the Colorado prisons, in one institution in Indiana and in two in Missouri. Two years ago, a questionnaire was sent by Professor Negley K. Teeters of Temple University, Philadelphia to the wardens of all the 68 state and Federal penitentiaries. The results were published in the Prison World for May-June, 1952. Fifty-eight institutions in thirty-eight states replied to the questionnaire. One warden in an unidentified state confessed to using flogging as a disciplinary punishment, but among those who failed to reply at all were the wardens of three southern states already mentioned. Furthermore, it is possible that some of those who replied failed to tell the truth.

Q. You have no statistics?—A I have no statistics on that.

⁽¹⁾ Caldwell, op.cit., pp. vii-viii.

The PRESIDING CHAIRMAN: I think we have evidence before this committee about the penitentiary at Kingston, where in one year there were a large number of administrations of corporal punishment but, due to certain administrative changes and improvements in the prison methods, that has almost disappeared, until today there are very few administrations of corporal punishment.

The WITNESS: It has been found by American prison administrators that the deprivation of privileges, loss of good time, solitary confinement for a brief time and reduction in grade are more effective ways. There is nothing that a prisoner hates to lose so much as alleviations of prison life. May I add that the Standard Minimum Rules for the Treatment of Prisoners contain the following rule: "Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences". These Rules were drafted by a committee of the International Penal and Penitentiary Commission and were approved by the Commission at its final session in 1951. Since then they have been approved by both European and Latin American government delegates to regional conferences in Geneva, 1952, and in Rio de Janeiro in 1953, under the auspices of the United Nations.

Hon. Mr. ASELTINE: I have one more question. How many states of the union practise corporal punishment?

The WITNESS: Delaware is practically the only one. Maryland has retained it for wife-beating, but I have no statistics from Maryland. A few years ago the statement was made that it was very rarely used. Those are the only two states in the union that use whipping as a punishment for crime. That means that 46 states have abolished it completely, nor is it found in the federal code.

By Mrs. Shipley:

Q. I wonder, Professor, if you have any knowledge of states or communities where, when very young persons are accused of not too serious crimes, the authorities administering justice might advocate whipping—or I think I should use the term "spanking"—administered by the parents under the jurisdiction of an officer of the court?—A. I do not know that strapping, or whatever you wish to call it, has been in use and is still in use in some correctional schools in the United States, but so far as I know it is not used anywhere on order of the court.

Q. Without any commitment to an institution?—A. Where used, it is entirely for disciplinary purposes, for violations of discipline in an institution.

Q. Do you know of any cases where it has been administered and the child has not been committed to a correctional institution?—A. No. I do not suppose that there is a legislative session in the United States—maybe that is too broad a statement—a legislative year in the United States that somebody, somewhere, does not raise the question of the whipping post. Occasionally also some judge, let us say, thinks that it would be a very good idea if the whipping post were re-established. These are isolated voices that fall on deaf ears.

Hon. Mrs. FERGUSSON: I just wanted to ask Professor Sellin if he has any information on when corporal punishment was abolished in the different states. I do not mean in each of the 48 states, but was there a general trend to do that in the early 1900's, or before that or since that?

The WITNESS: I am afraid that I can give only a general statement about that. The movement abolishing whipping goes back, at least in the northern states, to long before the civil war. (Corporal punishments were abolished

in Pennsylvania as early as 1786.) It was retained longer in some of the southern states. It is curious, for instance, that in Delaware the pillory was not abolished until 1905. This one state has held on to archaic forms of punishment longer than any other state.

Mr. SHAW: What is the significance of the title of Professor Caldwell's book, "Red Hannah"?

The WITNESS: "Red Hannah" is the nickname that the Delawareans give to the whipping post.

By Mr. Blair:

Q. Perhaps you could tell us whether the whipping post is still in use?—A. The whipping post has not been abolished in Delaware, but whippings are becoming more and more rare. Courts are not imposing it with the same frequency.

Q. The prisoner is tied to a post?—A. Yes, there is an illustration here of a whipping. (Witness shows illustration facing page 56 of Professor Caldwell's book). This occurred in 1935, when an 18-year-old prisoner received 10 lashes. The illustration is reproduced from a newspaper.

Mr. MITCHELL (*London*): What kind of an instrument is that?

The WITNESS: It looks like a cat-o'-nine-tails.

Mrs. SHIPLEY: With knotted ends?

The WITNESS: No.

Hon. Mrs. HODGES: It has a longer handle than the one we have seen.

The PRESIDING CHAIRMAN: Does the administrator always dress up as he is in that picture?

The WITNESS: The warden of the institution does it, however he may be dressed.

Hon. Mrs. FERGUSSON: I saw the instrument they used in one of our penitentiaries, and they have a belt that they put over the man's back to protect his kidneys and something at the back of his neck. There does not seem to be anything like that there.

The WITNESS: No, there does not, so far as these pictures show. In chapter I of his book, Professor Caldwell refers to a case in 1945, giving the sentence and then describing the whipping. He says:

Ten days later, about thirty persons, including several women, gathered in the yard of the New Castle County Workhouse to witness the public flogging of Harris and Palmer. Before each prisoner was whipped, he was stripped to the waist, his hands were shackled to the "post", and the sentence of the court was read. Warden Wilson administered the whippings, and Deputy Warden Wheatley counted as each of the ten strokes was well laid on the bare backs of the prisoners. Although the Warden kept his arm stiff at the elbow while applying the lashes, nevertheless great welts were raised on the bodies of the men, both of whom screamed and struggled during the whippings. The punishment was inflicted with the traditional cat-o'-nine-tails, which consists of nine leather cords, each a quarter of an inch wide and about two feet long, attached to a stick about eighteen inches in length. After the flogging the men were taken to the prison infirmary for examination and treatment.

Mr. BROWN (*Brantford*): What year was that?

The WITNESS: It was in 1945.

The PRESIDING CHAIRMAN: Have you any further questions, Senator Fergusson?

Hon. Mrs. FERGUSSON: No, thank you.

The PRESIDING CHAIRMAN: Mr. Winch?

Mr. WINCH: No.

The PRESIDING CHAIRMAN: Mr. Thatcher?

Mr. THATCHER: No.

The PRESIDING CHAIRMAN: Mr. Mitchell?

By Mr. Mitchell (London):

Q. Professor Sellin, the studies with which you have dealt in your brief seem to deal with a comparison of whipping and imprisonment and yet you pick the age groups 21 to 30, and 31 to 41, I think.—A. I do not know where you get those ages from?

Q. That was in the British report I think.—A. Your reference is to a conclusion to which the Cadogan committee came with respect to the effect of corporal punishment, a conclusion which Mr. Lewis-Faning finds has no statistical validity. The 440 prisoners studied by the Cadogan committee fell into no particular age group, and the prisoners studied by Professor Caldwell included every prisoner during the period 1920 to 1939 who was sentenced to be whipped by the court of Newcastle County, which means Wilmington and the immediate surrounding territory.

Q. Then it would appear that the greater number of floggings were ordered in cases of robbery with violence or armed robbery?—A. You are now speaking of England?

Q. Yes.—A. I inferred that from the fact that Mr. Lewis-Faning picked that particular crime to study, and glancing through the Cadogan Committee's Report I also gained the impression that it was robbery accompanied with violence which was most commonly punished by the courts in this manner.

Q. We have had several suggestions made to the committee, Professor Sellin, with respect to the use of some form of corporal punishment—caning has been mentioned or strapping—for offences by people that have been described as young hoodlums either after a period of probation and on a second offence, or perhaps even after an initial jail sentence. Would you care to give to the committee your views on the application of such a form of corporal punishment in connection with young hoodlums of an age say from 18 to 24?—A. I would say that being corporally punished would give them status among their fellow hoodlums, to use your term, because they had received the punishment and had stood up well under it. There is no assurance, that such a punishment would do more than inflict some temporary pain on them without doing any good. That kind of punishment always produces resentment at the indignity felt by the one being punished, and this would cancel any positive value that it might conceivably have. I think we have gotten away from the idea of using corporal punishment, as a result of the findings of modern psychology which indicate that it cannot be of any value whatsoever in dealing with criminals. It seems to me that if we want to succeed in reinstating people, who have committed crimes in the community, if we want to train them, reform them—if you please—we must use every device possible that is going to strengthen their good qualities and not make them worse. We are compelled to return practically all of them to the community. Most sentences are short and we need all the time possible in our correctional institutions or otherwise for the application of positive forms of treatment, rather than a negative form of treatment such as corporal punishment. I firmly believe that it is more likely to hinder the reformation of the individual than be beneficial.

Q. You do not feel then that an extension of the parole system combined with—where necessary—the imposition of a caning would have a better effect than simply the automatic sentencing of some of these embryo criminals to jail?—A. Do you mean in this instance, placing a person on probation?

Q. Yes.—A. Give him a caning and send him on probation rather than to prison?

Q. I am suggesting he be placed on probation on the first offence and on the second offence rather than being sent to jail, where he may become entrenched in his ways, that he be given a caning and sent back out into the world again?—A. I do not think that anybody wants to go to prison, and I should think that most offenders would prefer to take a few lashes and be free rather than be deprived of their liberty, if you were to give them the choice, but I take it that is not the question. The question is whether such a procedure would reform an offender; that I would seriously doubt.

Mr. MITCHELL (*London*): That is all.

By Mr. Boisvert:

Q. Professor Sellin, are you aware that in the United Kingdom there is a trend now to restore flogging as a deterrent to crimes of violence?—A. I have heard about it.

Q. Was it abolished in 1948?—A. Yes, by the Criminal Justice Act.

Mr. BOISVERT: That is all, Mr. Chairman.

Mr. SHAW: Although Professor Caldwell's book was written ten years ago and your foreword was written at the same time, the fact that you have quoted that foreword indicates that as today this is your thinking with regard to corporal punishment?

The WITNESS: Yes.

Mr. SHAW: It has not changed in the ten years?

The WITNESS: No, not in the slightest.

The PRESIDING CHAIRMAN: Mr. Brown?

Mr. BROWN (*Brantford*): No questions.

The PRESIDING CHAIRMAN: Mr. Veniot?

Mr. VENIOT: No.

The PRESIDING CHAIRMAN: Mr. Blair?

By Mr. Blair:

Q. Looking at your diagram, on the surface it might appear that the rise in application of corporal punishment just prior to 1920 may have had some effect in controlling robbery with violence, and I notice looking at this more particularly in the years following 1930 there seems to have been, between 1930 and 1935, a little peak of robbery with violence and this is followed by a very substantial increase in the application of corporal punishment. As corporal punishment comes down robbery with violence comes down. I wonder whether you would indicate whether there was some correlation between the punishment and the crime?—A. Not according to Mr. Lewis Fanning. That is the difficulty with peaks and valleys in diagrams of this type because when you look at one point of it it might appear as if there were a direct relationship, but when you look at another part you do not find it, and therefore, there is nothing constant in the relationship between those two curves. If one looks at the diagram—and it covers a very long period, 1864 to 1936 inclusive, a period of 72 years—during the early decades flogging was, you might say, rarely ordered. Since these are floggings ordered in connection with robberies with violence, presumably the risk of being flogged was not equally great during the entire period. From about 1920 the risk of being flogged became greater and greater; you notice that the robbery rate drops a little one year and rises another year, but there seems to be no relationship between those changes and the risk of being flogged: at least Mr. Lewis-Fanning found none that had any statistical significance. From 1864 to about 1920 robbery with

violence declined in England and Wales, reaching a more or less stable level after 1920. What has happened since I do not know. It would be interesting to follow it up and get more recent data which would be easy to secure from the criminal statistics of England. Flogging was abolished in 1948 when one would assume that, in view of the difficulties of post-war adjustment, economic problems, and so on, rates of robbery with violence would probably have tended to be higher than normal.

Q. Well, I take it that you would interpret these figures the same way that the Cadogan Committee itself interpreted them? I notice that they deal quite extensively with them in paragraph 8 of their report at page 59 indicating that there seems to be no relationship between corporal punishment and the extent of robbery with violence?—A. Yes, that would seem to be obvious from the diagram.

Q. At page 3 of your statement, you quote from Dr. Caldwell, and paragraph 2 of his work states that the rate of recidivism among those whipped was 61·9 per cent. Now, turning over to page 4 in paragraph 7 you say: the amount of recidivism was greater among those who had been whipped and was 66·8 per cent. I wonder whether you could indicate how these two figures could tie in? I think there is an explanation. May I suggest that the only explanation I can see is perhaps that first figure refers to people who have been only whipped once and the figure in paragraph 7 might be the total of whippings.—A. I find, on consulting Dr. Caldwell's book, pp. 76 and 78, that the figure of 61·9 per cent refers to 320 prisoners whipped at least once during the period 1920-1939; the figure of 66·8 per cent, on the other hand, refers to 211 prisoners whipped during 1928-1939.

By Mr. Cameron (High Park):

Q. What is your opinion of the "old fashioned woodshed" technique?
—A. Of no value in dealing with criminal offenders.

Q. Do you see no punitive value at all in the inflicting of corporal punishment in certain types of offences? One particularly mentioned was wife beating where the husband inflicts physical pain on his wife. Do you not think that is probably a very just sentence, to subject him somewhat to his own medicine?—A. We call that a poetic punishment, I believe. I do not know because I do not know what happens to wife beaters after they have been punished.

Q. The husband has done this and suppose he is very remorseful, do you not think that the punishment is probably better for him and society; that he suffers some of the pain he has inflicted on his wife?—A. The question is, does he stop beating his wife? That is the purpose of the punishment.

Q. I am not discussing now hardened wife beaters who make it a habit of beating up their wives once a week, but the person who in the stress of an emotion causes physical pain to his wife to such an extent he is brought into the police court and is before the magistrate and the magistrate instead of saying this man has to earn for the family and so on, says I think I will order him several beatings with the whip and let him go. Is that not apt to have a more therapeutic value to the man himself? His soul is cleansed from the offence he did against his wife much more than if he spent two days in jail?—A. I am afraid I do not know what the effect would be, but I think that type of person you have mentioned would profit more from medical treatment.

The PRESIDING CHAIRMAN: I do not think you were here at the opening of Professor Sellin's remarks, Mr. Cameron.

Mr. CAMERON (*High Park*): No, I was not.

The PRESIDING CHAIRMAN: He said that he did not profess to have made many studies on corporal punishment.

By Mr. Cameron (High Park):

Q. The answers of a man with the obvious qualifications of Professor Sellin are very valuable. I am just trying to clear my own thinking on this matter. There are many crimes in this country that one would class as crimes of violence against women. I have an idea in my own mind that such an offender is punished more effectively if given the strap and a short sentence, as it brings to him the fact that he knows it is wrong. The punishment is justified; he has inflicted it on someone himself; and there is a more beneficial effect than if he spends the next year in jail.—A. I think that the best way to find out is to make a series of studies of persons who have been treated in this way to find out what happens to them. Otherwise, we are making assumptions which may seem logical to some persons and yet—

Q. I ask it as a matter of opinion.—A. You are asking me to express an opinion on questions of justice, public vengeance or retribution, which I have steered clear of as much as possible. I have tried to keep to the question of deterrence, and I have presented data, so far as I have been able to discover them, based on research, which do not seem to indicate—

Q. I am not thinking so much about deterrence.—A. You want to know how I feel about it. I prefer not to engage in that kind of an argument, if you will excuse me.

The PRESIDING CHAIRMAN: Are there any more questions? I will ask Senator Hodges to express to Doctor Sellin our appreciation.

Hon. Mrs. HODGES: I have very much pleasure in extending to Professor Sellin the appreciation of this committee for his courtesy in coming up here and giving us such a wealth of his experience and expressing it in a way that shows that he has made a keenly analytical study of it. I am sure that it will contribute a great deal to the deliberations of this committee, and I have very much pleasure in extending our thanks to Professor Sellin.

The WITNESS: Thank you very much, Madam Chairman. This experience has been to me a very pleasant one, and what is more it has shown me quite clearly how many gaps there are in the information which we possess about the death penalty, this most serious of all punishments, and how many additional inquiries need to be made about this or that aspect of it, inquiries that have not so far been made except in the most superficial manner. I have, from that point of view, also benefited greatly from the discussion, because your questions have shown those gaps perfectly clearly. Thank you very much.

The PRESIDING CHAIRMAN: May I, Professor Sellin, add my personal appreciation, and also on behalf of the committee, to you for your visit here and the assistance which you have given to this committee. I am sure that you have proved most helpful. Thank you very much.

The WITNESS: I shall be glad to send you additional information if you at any future time should want it on any specific question in this connection referring to the United States. The question of whether or not more police are killed by criminals in abolitionist states than in death-penalty states is one, for instance, on which I might secure data that would have some interest.

The PRESIDING CHAIRMAN: There has been a question raised from time to time as to whether we cannot get Canadian information. I think we will all agree that the population of Canada is such that it does not lend itself to the accumulation of such information as we can obtain from the United States. I think that the information which we are able to get from a densely populated area with the large population of the United States is more helpful to us than what we might get from Canada. We have not the experts—or, if we have, we have not been able to uncover them—of the calibre of Professor Sellin. We have not been able to get the statistical information which he

has available to him and which he has given to this Committee, and I think that this committee is well advised to take whatever information they can get from whatever source it may be obtained, because, after all, crime is crime no matter where it is. Social and economic conditions may be different, but basically I think that the information would be very valuable. I certainly think that we should avail ourselves of every opportunity of getting this information and I certainly want to thank Professor Sellin for his offer of subsequent assistance to this committee.

Before we adjourn: there will be a meeting of the subcommittee next Tuesday at 11.30 a.m.—you will be advised of the place—so that we may get on to the drafting of our report to the Houses of Parliament.

The meeting is now adjourned.

APPENDIX

Statement prepared by Professor Thorsten Sellin.

THE DEATH PENALTY

In most countries that have retained the death penalty executions occur occasionally but with what seems to be a decreasing frequency. The setting of these executions is not always the same and the techniques may vary, but they all have one thing in common. Whether the extinction of the offender's life is participated in by only two persons, as in Japan, by two scores of persons as in California or by a public multitude as in Latin America, those assembled on such an occasion are there, in the privacy of a room or a prison yard or without privacy in a public place, for the deliberate purpose of witnessing or assisting in putting a human being to death. They are impersonally, so to speak, obeying the order of a court of justice which in turn obeys the dictates of a legislature chosen by an electorate or responsible to an authority whose opinion it reflects. There must always be something macabre about such scenes; they remind us that this oldest and presumably most severe of all present-day punishments still enjoys popular support in many states.

A considerable number of countries, however, no longer tolerate the death penalty. Generally speaking, it is still acceptable to all the states of Australia, except Queensland; all the states of Asia, except Israel and the Indian provinces of Travancore and Nepal; and all the African governments. It is in Europe and the Americas that we find the great cleavage of opinion. The death penalty is still in use in peace time in all the countries behind the iron curtain and in the Balkans. West of that area, however, all countries have abandoned it except the United Kingdom, Ireland, France and Spain. In Latin America it has been abolished by the South American states of Argentina, Brazil, Colombia, Ecuador, Venezuela and Uruguay, and the Central American states of Costa Rica, Dominican Republic, Mexico (federal law and all but ten of the states) and Panama. Puerto Rico abolished it in 1929. North of the Rio Grande only six of the states of the United States have removed it. It is a curious fact that among nations of western culture, the English-speaking have shown the greatest attachment to this penalty.

There is no ready answer for this distribution of countries with and without the death penalty, which in this connection I am restricting to the civil criminal code that governs the average citizen in time of peace. If we compare these two classes of western countries—the only culture area in which we find a decided trend away from the death penalty—we discover in both classes nations with the same level of civilization, the same religion, the same kind of population, the same form of government, the same sense of justice and morality and—the same rates of homicides. We also find in each class countries which in some of these respects, including the homicide rates, differ very greatly from each other. Let us look at table I which gives the homicide rates of some countries in the two groups.

TABLE I

COMPARATIVE HOMICIDE DEATH RATES IN 1948 OF SOME COUNTRIES
WITH OR WITHOUT THE DEATH PENALTY FOR MURDER

Rates per 100,000 population

Countries with death penalty		Countries without death penalty	
Name of country	Rate	Name of country	Rate
El Salvador.....	44.3	Colombia.....	15.9
Bolivia ⁽¹⁾	6.6	Puerto Rico.....	14.1
U.S.A.....	5.8	Costa Rica ⁽¹⁾	5.0
Spain.....	1.4	Dominican Republic.....	4.9
Canada.....	1.2	Finland.....	4.6
Australia.....	1.1	Italy.....	2.4
New Zealand.....	1.1	Austria.....	2.1
France.....	0.8	Portugal.....	1.6
Ireland.....	0.6	Belgium.....	1.4
Scotland.....	0.6	Western Germany ⁽²⁾	1.2
England and Wales.....	0.5	Denmark.....	1.0
		Switzerland.....	1.0
		Sweden.....	0.8
		Norway.....	0.5
		Netherlands.....	0.4

SOURCE: United Nations, Demographic Yearbook, 1952. New York, 1952, Table 20.

(¹) 1947 rate.

(²) 1949 rate.

This table is not presented with any suggestion that it illustrates the virtue of using or not using the death penalty. It does not and can not do so. What it illustrates is that countries with high rates of homicides equally like or dislike this penalty, and so do countries with low homicide rates. Behind these two divergent policies there obviously lie other reasons than the extent of criminality of a homicidal nature, reasons of an intangible character, connected with the political, economic and social structure of a country, and buttressed by traditions protected by sentiments and beliefs which apparently are not influenced by the level of criminality.

No matter what arguments are used for the retention or abolition of the death penalty today a glance at the history of punishment shows that they have remained the same in objective and form but have changed in content and significance. If as many people say the death penalty is a moral necessity and the only just retribution for crime or that the sense of justice of a people requires it, it is obvious that the last two centuries have seen great transformations in concepts of morality and justice. We have abolished torturing forms of punishment like breaking on the wheel and burning at the stake; we no longer see either justice or morality in hanging for theft. If, on the other hand, we say that the death penalty is a great preventive because the fear of such an ignominious death holds prospective criminals in check, history shows that we increasingly tend to substitute other punishments for it, that we have exerted ourselves in discovering ways and means to make executions as painless and rapid as possible, and that we have further reduced prevention by hiding executions from public view and giving them the least possible official publicity. These incontrovertible facts signify that while a sense of justice and high moral concepts are constant in man, because they are necessary to all social life, the ideas of what is just and moral change. The people of some nations that formerly regarded it as just, moral and proper to hang a thief, brand a rogue and burn a witch, now either consider it immoral to take life at all as a punishment or immoral to take it except in extremely abnormal circumstances such as in wartime. Therefore it seems obvious that the existence

of the death penalty does not depend on any immutable principle. Like all social policies it depends on changes in attitudes and beliefs which are influenced by the conditions and circumstances of social life.

It would require too long an analysis to attempt to explain why the abolition movement has made such strides in the last century and a half, but the struggle about this punishment seems to be one between ancient and deeply rooted beliefs in retribution, atonement or vengeance on the one hand, and, on the other, beliefs in the personal value and dignity of the common men that were born of the democratic movement of the eighteenth century, as well as beliefs in the scientific approach to an understanding of the motive forces of human conduct, which are the result of the growth of the sciences of behavior during the nineteenth and twentieth centuries. If these newer trends of our thinking continue undisturbed the death penalty will disappear in all the countries of Western culture sooner or later.

Those who debate the validity, propriety or necessity of capital punishment offer arguments which are quite understandable in terms of what has just been said. Some of these arguments are of a dogmatic nature and require equally dogmatic replies. Whether, for instance, the death penalty is just or unjust depends entirely on a person's concept of justice. I shall here avoid such arguments, since they remind one of the story told of Sidney Smith, who upon seeing two persons arguing over a back fence without arriving at any agreement told his companion that one could expect no other result since the disputants were standing on different premises. There are, however, other types of arguments which begin with the same premise but appeal to experience and could arrive at different conclusions depending on evidence. These arguments assume that the existence or use of the death penalty produces certain demonstrable effects, such effects being cited as justification for retaining or abolishing it. It is some of these arguments which should be examined in the light of the modest evidence that statistics and illustrative cases can yield for or against them.

Chief among the utilitarian claims made in connection with the death penalty are the following assertions:

1. The death penalty is a specific deterrent of murder or whatever crime may be so punishable. By specific deterrent is meant that no other punishment—life imprisonment, for instance—would have as strong an effect. Opponents of the death penalty deny that it has such specific power.

2. The use of the death penalty occasionally results in an error of justice, causing the execution of an innocent person. Statements before your committee indicate that this claim is doubted so far as Canada is concerned.

3. The existence of the death penalty is a stimulus to murder and therefore results occasionally in the loss of an innocent person's life, which would otherwise be safe. This claim has not been raised hitherto in testimony before the committee.

4. Whether or not life imprisonment or some other punishment may be as deterrent as the death penalty, it does not adequately protect society against the further criminality of the prisoner, because he will remain a threat to fellow-prisoners or the prison personnel while incarcerated and may again become a public threat because he may escape or be released into the community by pardon or parole.

There are no doubt other arguments of similar nature which would be susceptible of proof or disproof by an examination of facts. Some of them are too absurd to merit attention and are rarely heard nowadays. They have, at least, not been mentioned before this committee. Those listed above have considerable interest, however, and in subsequent pages I shall try to deal with them, fully recognizing that in connection with many of them the evidence is more in the nature of straws in the wind than definitive proof.

However, opinions for or against the death penalty that claim to be based on beliefs about its effects rest on the interpretation of the kind of data which will be presented here.

I. IS THE DEATH PENALTY A SPECIFIC DETERRENT TO MURDER?

It seems reasonable to assume that if the death penalty exercises a deterrent or preventive effect on prospective murderers

- (a) Murders should be less frequent in states that have the death penalty than in those that have abolished it, other factors being equal. Comparisons of this nature must be made among states that are as alike as possible in all other respects—character of population, social and economic condition, etc.—in order not to introduce factors known to influence murder rates in a serious manner but present in only one of these states.
- (b) Murders should increase when the death penalty is abolished and should decline when it is restored.
- (c) The deterrent effect should be greatest and should therefore affect murder rates most powerfully in those communities where the crime occurred and its consequences are most strongly brought home to the population.

Prior to any analysis of available data we are compelled to make certain assumptions. First we must decide what element in the death penalty gives it a maximum of deterrent power. Its mere inclusion in a statute which is not applied in practice would not be enough. We can assume—those who debate the issue do it generally speaking—that it is the execution which by its finality is the strongest agency of deterrence. We should therefore examine the effect of executions on murder rates.

This brings us to a second necessary assumption. We do not know with any great degree of accuracy how many murders punishable by death occur. In the United States, for instance, where only murders in the first degree or similar murders are subject to the death penalty, no accurate statistics of such offences exist, yet this is the only type of murder which people are presumably to be deterred from committing. Most deaths are no doubt recorded, but among deaths regarded as accidental or due to natural causes or suicide there are no doubt some successful murders. Where the killer never becomes known it is often impossible to determine if the death was the result of murder or manslaughter. This is, of course, a problem which exists in all countries. We are everywhere compelled to use other statistics than those of strictly capital homicides.

Most advanced countries today possess statistics of reported deaths classified by cause of death. One of these causes is homicide, i.e. deaths caused by others. Students of criminal statistics have examined these data with some care and have arrived at the conclusion that the homicide death rate is adequate for an estimate of the trend of murder. This conclusion is based on the assumption that the proportion of murder in the total of such deaths remains unchanged from year to year. Accepting this assumption, we shall examine the relationship between executions and the rates of deaths due to homicide. One may challenge the assumption, but the fact remains that there are no better statistical data on which to base arguments about deterrence. Other statistics, such as conviction statistics, have even greater defects.

A. Comparative homicide death rates in death-penalty states and abolition states.

In examining this problem, we shall limit ourselves to data from some American states, six of which have abolished the death penalty for murder, namely, Maine, Rhode Island, Michigan, Wisconsin, Minnesota and North Dakota. All but one of these states (Rhode Island) lie along the southern

border of Canada. We shall compare the level and trend of the homicide rates of each of these states with similar rates and trends in contiguous states that have retained the death penalty. The seven graphs here presented (see Diagrams I to VII at end of this Appendix) cover for the most part the period 1920-1948. They were originally included in a memorandum prepared for the Royal Commission on Capital Punishment, and the diagrams and statistical tables upon which they are based are found respectively in the minutes of evidence (30th Day) and the report of that commission (pp. 350-1). It is not necessary to reproduce the tables here, for the diagrams illustrate the situation quite effectively. The number of executions during a given year has been inserted at the proper place along the curves, but is in some instances lacking before 1930; in that year the United States Bureau of the Census first began to collect data on executions in the various states. In a few instances the curves for the homicide rates do not begin with 1920, because the states in question (Iowa, North Dakota, South Dakota) had not yet begun to report such rates to the Bureau of the Census.

An examination of the diagrams reveals several things:

1. The level of the homicide rate varies in different groups of states. It is lowest in the New England areas and in the northern states of the middle west and lies somewhat higher in Michigan, Indiana and Ohio.
2. Within each group of states having similar social and economic conditions and populations, it is impossible to distinguish the abolition state from the others.
3. The trends of the homicide rates of states with or without the death penalty are similar.

The inevitable conclusion is that executions have no discernible effect on homicide rates which, as we have seen, are regarded as adequate indicators of murder rates.

B. Do murders increase when the death penalty is abolished? Do they decrease when it is re-established?

A number of American states and a few European countries, as well as New Zealand, have experimented with the abolition of the death penalty and have restored it, after periods of varying length. In some instances, these periods have been short—one year in Arizona, 1917-1918, two years in Missouri, 1917-1919, for instance—while in other cases the periods have been long enough to furnish a basis for conclusion. Kansas had no executions between 1870 and 1907, abolished the death penalty in 1907 and introduced it again in 1935. South Dakota had no death penalty between 1915 and 1939. The diagrams here presented show the trends of the homicide rates in these two states compared with rates in neighbouring states. It is apparent that in neither state did the introduction of the death penalty have any direct effect on the rates for homicide.

An examination of the homicide rates or other pertinent statistics concerning Iowa, which abolished the death penalty between 1872 and 1878, Colorado (1897-1901), Washington (1913-1919), Oregon (1914-1920), Tennessee (1915-1917) as well as the states of Missouri and Arizona already mentioned does not afford any basis for concluding that the policy of abolition and restoration bore any relationship to the death penalty. In some instances there were fewer homicides during the abolition period and in other cases more homicides.

Various European countries which have experimented with abolition yield no more conclusive evidence of the supposed salutary effect of the penalty. Data from countries or states that have abolished it without restoring it

reveal nothing that shows any connection between their policy and the homicide rate. Generally speaking, the homicide rate continues whatever trend it had before the abolition of the death penalty or before its restoration.¹

It might be argued that the absence of any demonstrable effect of the death penalty on the homicide rate is due to the fact that this punishment is not used often enough. It is clear from history that its use has been declining. This reflects changing social attitudes towards this penalty. Past experience argues against the possibility that an increased use of executions would have any effect on the frequency of murder and it is idle to suggest that we should experiment again with a harsher policy, for public sentiment would not support it. It may appear paradoxical but it seems to be true that the death penalty can be retained only by using it so sparingly that it cannot possibly serve any useful purpose which would not be as well served by some other punishment.

C. Is there special evidence of deterrent effects in the locality in which the executed offender committed his crime?

Some years ago a careful study² was made in the city of Philadelphia, which has a population of about two million. The study tried to discover the frequency of wilful homicides during 60 days prior to and 60 days after five widely separated executions which were highly publicized and followed upon equally well publicized crimes and trials. The dates of homicides occurring during the periods studied were established with the aid of the police and the coroner's office and an effort was made to eliminate homicides which were not of a capital nature. Those remaining were plotted on a calendar basis and an effort made to find what effect the execution had on the frequency of the homicides that followed it, compared with the distribution of these crimes preceding the execution date. The assumption was made that if the execution had any effect there would be fewer homicides in the days and weeks after the execution than before it. During the total of 300 days prior to the executions there were 105 days without homicides, while during the same period after the executions there were 74 such days. There were a total of 91 homicides before and 113 after the executions.

D. Conclusion

It is obvious from the data presented, as well as from more detailed data given in the report of the Royal Commission on Capital Punishment, that there is no observable relationship between homicide death rates and the practice of executing criminals for murder. In other words, whether or not a state uses the death penalty, murders will occur in number and frequency determined by other factors inherent in the social, political and economic conditions of the country. The death penalty is no specific deterrent for murder. It is interesting to note that this supposed effect is discussed only in debates about the abolition or adoption of this penalty. Students of the problem of murder and of murders rarely think of mentioning the death penalty when they discuss ways and means of preventing murder, probably because they have found no relation between them.

In 1950, when the Minister of Justice of New Zealand argued for the restoration of the death penalty (abolished in 1941) he said that he was satisfied that the statistics of murder "neither prove nor disprove the case for capital punishment, and therefore they neither prove nor disprove the case against it." This is correct if it means that such statistics seem to have little

¹ The best existing analysis of available data on the death penalty as a deterrent is found in appendix 6 of the Royal Commission on Capital Punishment. 1949-1953 Report (Cmd 8932)

² Robert H. Dann, *The Deterrent Effect of Capital Punishment*, 20 pp. Philadelphia, 1935. Friends' Social Service Series, Bulletin No. 29.

to do with a people's like or dislike for this penalty, but it is incorrect if it means that statistics prove nothing. What these statistics prove is not the case for or against the death penalty, but the case against the general deterrent effect of that penalty.

II. ERRORS OF JUSTICE

Justice can never be infallible. Granted that courts do their best to convict only the guilty and impose the penalty of death only on those who merit it according to the law in force, there still exists the possibility that in isolated instances an innocent person may be executed. There are well-documented cases on record testifying to this possibility. Some of them have been analyzed by Professor Otto Pollak in an article on this question in the November, 1952, volume of the Annals of the American Academy of Political and Social Science. In Professor Edwin M. Borchard's work *Convicting the Innocent* (New Haven: Yale University Press, 1932) nine American cases of persons who escaped execution by a hair's breadth are also related. In a study of the pardoning power of the president of the United States, published in 1941 (W. H. Humbert, *The Pardoning Power of the President*, Washington, D.C., 1941) the reason assigned for granting a pardon in 46 cases between 1887 and 1899 was "the dying confession of the real murderer".

In his work on Capital Punishment in the United States (Philadelphia, 1917), Professor Raymond T. Bye gives a considerable number of cases in which innocent persons were executed, as well as cases where life terms were imposed for murder and the convict later found to be innocent. Dr. Amos O. Squire, formerly chief physician of Sing Sing prison in New York and in 1935 medical examiner of Westchester County, New York, published that year an auto-biographical work under the title of *Sing Sing Doctor*. In a chapter on "Irrevocable Capital Punishment", Dr. Squire refers to two English cases, one in 1869 and one in Manchester in 1876; in the first case an innocent woman was executed and in the second a last minute reprieve resulted in imprisonment which ended some years later when the real criminal confessed to the murder. In the famous case of Jesse Lucas in 1908, testimony found many years later to be perjured resulted in his being sentenced to death; had his sentence not been commuted his life would have been lost. Warden Lewis E. Lawes of Sing Sing, in his book *Meet the Murderer* (New York, 1940), recites several cases from his own experience that involved the execution of people about whose guilt he had become very doubtful. In a case which did not involve the death penalty and was finally resolved on May 3, 1954, in Philadelphia, a man was cleared in a second trial after having served 24 years of a life sentence for a slaying he did not commit.

No one has, to my knowledge, really searched the history of capital punishment with the express purpose of discovering how frequently it has been applied erroneously. They are probably rather rare, considering the total number of executions. Some might argue that such errors are human and unintentional, and that by and large they are outweighed by the great service to society which the death penalty is presumed to have in deterring others. This would seem to be the only possible argument, since those who defend the death penalty only because it is a just or a well-deserved retribution for crime, or atonement for taking a human life, could hardly tolerate or defend the execution of innocent people. But, if there is no way of proving the deterrent effect of the death penalty on others, the execution of a single innocent person becomes indefensible.

III. CAPITAL PUNISHMENT AS CAUSE OF MURDER

It is a curious fact that there are cases on record that show that the desire to be executed has caused persons to commit a capital crime. Such crimes are indirect forms of suicide as a rule, the individual involved being unable to take his own life. In other instances a pathological desire to die by execution has been noted. For instance, in 1820, in Dresden, Germany, a murderer was beheaded publicly. The ritual made such an impression on a weak-minded woman present that, four weeks later, she killed a girl who was visiting her. She then went to the police, who on visiting her house found the date of the execution just mentioned marked on her door. She said that this execution, as well as two others she had witnessed in 1804 and 1809, had put into her head the idea of committing a murder so that she could die in the same way.³

Committing suicide by execution seems to have been a well-known procedure in olden days. In the Journals of Henry Melchior Huhlenberg (Philadelphia, 1945), a leading pastor in Philadelphia before the Revolution made the following entries in his diary:

May 23, 1765. Heard a distressing report from New York. A number of awakened members of Brother Wyegand's congregation have been holding weekly devotional hours, and one member of the said company cut the throat of his own three-months old son The malefactor confessed that he had been tired of life and tormented with the notion that he should take his own life, but that he had not been able to summon up courage to kill himself, so he had hit upon this act as a way in which he might die by the process of the law. (Vol. 2, p. 235)

Sept. 1, 1765. From five to six o'clock I spent in the prison, speaking and praying with a thirty-year-old German, named Henrich Albers, born in Lüneburg, Hanover. He had purposely cut the throat of a twelve-year-old German boy in order that he might lose his own life. (*Ibid.*, p. 264.)

The motivation behind such crimes is more clearly stated in the description of a case reported in a medico-legal work published in Germany in 1789.⁴

The 43 or 44-year-old woman suffered from a depression which developed severe states of anxiety during which suicidal thoughts became more and more pressing. Being a deeply religious woman, who prayed much and sought relief in devotional exercises, she, in her illness, considered that if she committed suicide, her soul would not be saved and she would be lost. Again and again the idea came to her: If you kill yourself, you will be eternally damned and what will become of your poor husband and your infant? Suddenly a bright notion came to her: You must kill your child and then you will be killed. The innocent child will go to Heaven earlier and, before you lose your life by a strange hand, you will have time for penance and to receive God's mercy.—While her husband was away, she nursed the infant, kissed it and threw it into the privy vault. When she thought that the infant was dead she went to the police.—In prison she was quiet and happy and afraid of only one thing, that the court might declare her insane, spare her life and send her to Spandau, for then her plan would have miscarried. I believe that this woman has taught us something, namely that even an abolished death penalty may have an element of deterrence.

³ Frede, "Hinrichtung als Mordsuggestion", *Monatsschrift für Kriminal psychologie und Strafrechtsreform*, 19:252-3, 1928.

⁴ H. von. Hentig, "Die Todesstrafe als Mordreiz", *Monatsschrift für Kriminal psychologie und Strafrechtsreform*, 20:305, 1929.

These cases must have once been fairly frequent⁵ because Denmark, by an ordinance of Dec. 18, 1767, deliberately abandoned the death penalty in cases where "melancholy and other dismal persons [committed murder] for the exclusive purpose of losing their lives". A leading Danish jurist of that period explained that this limitation was introduced because of "the thinking that was then current among the unenlightened that by murdering another person and thereby being sentenced to death, one might still attain salvation whereas if one were to take one's own life, one would be plunged into eternal damnation."⁶

The ordinance was ineffective in one case, at least, that of Jens Nielsen, who was born in 1862 and spent a most unhappy and unfortunate childhood. In 1884 he was sentenced to 16 years of hard labor for theft and arson. The following year he tried to kill a prison guard. He was tried, sentenced to death and received a commutation to life. He was then placed in solitary confinement. A year later he tried again to kill a guard, "realizing that he could not stand solitary confinement, did not have the nerve to commit suicide and wanted to force his execution." He was again tried, sentenced to death and the sentence commuted. In 1892, having remained in solitary confinement all that time, he tried again to kill a guard. This time he got his wish, was sentenced to death and executed, November 8, 1892.⁷

It may well be that cases of this type no longer are common, but they have not disappeared completely. Less than two decades ago, one occurred in Lyons, France, described by Dr. Edmond Locard, chief of the police science laboratory of that city.⁸

A couple attended the Celestine Theater in Lyon. When the curtain had risen, the hall being half dark, the husband saw his wife fall forward. He raised her and discovered that she had been struck in the back. The knife was in the wound. The show was stopped. The wounded was removed to the foyer where she died. The killer made no resistance when he was arrested. He admitted his crime. His victim was a complete stranger to him, as was her husband. He did not know their names. He had no reason to wish them ill. Although the deed appeared that of one demented, judicial investigation was started. No reason that could explain the act was discovered. On the other hand, the criminal revealed no sign of insanity. He was an honorable worker, pious, honest, without vices; he could not be executed by insanity or furor, to use the terms of the law. After the sentence to death he gave the following strange explanation: "I do not want to sin. For some time I have felt temptations against purity. I fear I cannot remain chaste. I could not think of suicide, which is a sin more serious than fornication. I therefore decided to commit a capital crime, for thus I would have time to repent before my execution and would arrive immaculate in Heaven!"

There are no doubt isolated cases still where the death penalty incites to murder. In all likelihood those involved would be found to be mentally deranged and placed in appropriate institutions. However rare they may be, such indirect suicides furnish an argument against the death penalty.

⁵A large number, from the middle of the 17th century to 1829 are reported in Professor H. von Weber's study "Selbstmord als Mordmotiv" in Monatsschrift für Kriminalbiologie und Strafrechtsreform, 28:161-81, April 1937.

⁶Quoted in Johannes Andenaes, "General prevention—illusion or reality". Journal of Criminal Law, Criminology and Police Science, 43: 176-198, July-August, 1952.

⁷Stener Grundtvig, *Dodsdommene i Danmark 1866-1892*, Copenhagen, 1893.

⁸Dr. Edmond Locard, "Le crime sans cause", La Giustizia Penale (Rome), Pt. I, 45: 411-422, November, 1939.

IV. DOES THE LIFE SENTENCE FURNISH ADEQUATE PROTECTION AGAINST MURDER?

Even though some advocates of the death penalty acknowledge that it is not a specific general deterrent they still believe that it possesses the undoubted effect of removing one convicted of murder in so permanent a way that he will never again be a menace to the community, whether it be the prison community or that outside to which he may be returned by release before he dies. Therefore, we need to know if those who have been sentenced to prison after conviction on a capital charge actually prove to be such a menace.

First let us examine what happens to such prisoners. Some years ago a study was made of all the cases of this type in which the prisoner was released from prison at some time during the period 1926-37 in seven American states, five of them death penalty states and two of them abolitionist states. The data are contained in the following table II.

TABLE II
METHOD OF RELEASE AND TIME SERVED BY PRISONERS ORIGINALLY COMMITTED TO STATE PRISONS IN SEVEN AMERICAN STATES
AFTER CONVICTION OF A CAPITAL CRIME (MURDER) AND RELEASED FROM THESE PRISONS DURING 1926-37

State	Number released executed	First degree commitments (a)						Second degree commitments						
		Died			Paroled or pardoned			Other released			Died			
		Average time served (years)	Number	Average time served (years)	Average time served (years)	Number	Average time served (years)	Average time served (years)	Number	Average time served (years)	Average time served (years)	Number	Average time served (years)	
Connecticut (b)	58	8	1	25.0	.....	.....	49	13	16.9	36	18.0	.....	.....
Massachusetts (b)	144	26	3	25.5	.....	.....	115	15	12.3	80	15.8	20	4.5
Pennsylvania	1,150	103	97	5.2	48	12.8	8	2.8	950	63	4.4	827	8.2	
New Jersey	371	44	79	7	8.9	5.6	12.1	16	3.9	248	20	6.5	188	7.9
California	568	121	270	8.1	181	12.8	.....	.....	177	28	7.6	132	10.4
Kansas (c)	217	98	21	10.4	42	9.4	34	11.1	119	8	4.5	45	6.7	
Michigan (d)	407	193	52	8.2	92	13.8	49	3.3	214	19	4.1	180	7.3	
													15	

(a) Excluding executed death sentences.

(b) Had mandatory death penalty upon conviction of murder, first degree until 1951.

(c) Death penalty re-instituted in 1935.

(d) Abolished death penalty in 1846.

Of the first degree cases listed in the table as having been pardoned or paroled, 363 were paroled into the community, 23 were paroled in order to permit their deportation and 36 were given pardons. The corresponding figures for second degree releases were 1,280, 60 and 143. In addition, Connecticut pardoned 5 convicts for deportation. Among the first degree releases headed "other releases" 25 were released by order of a court, 36 were transferred to mental institutions, 24 escaped and 23 were released at the expiration of their sentence, which may mean that the convicts involved had earlier received a commutation of their life sentences to a term of years. Of the "other releases" of second degree murderers, 38 were by order of the court, 35 were transfers to mental institutions, 24 escaped and 121 served to the expiration of their terms, whether these were commuted terms or original terms. The investigation containing these data was made by Alfred Harries, special agent of the Bureau of the Census, and was based on information supplied to the bureau in connection with its annual report on prisoners in state and federal prisons and reformatories.⁹

Prison authorities rather generally find little to complain about prisoners who are serving sentences for murder. In 1950, The International Penal and Penitentiary Commission conducted a survey by questionnaire sent to the governments of a considerable number of states. The results were never published. One of the questions asked for available information indicating whether violent assaults on prison personnel or fellow prisoners, suicide or attempted suicide, escape or attempted escape, and disciplinary violations in general were more frequently committed by these prisoners than by others.

Austria, Belgium, Denmark, England and Wales, Finland, Norway, Sweden, Switzerland and the warden of the Eastern Penitentiary, Philadelphia, replied that there were no indications that these forms of behaviour occurred more frequently among those serving time for capital crimes. Countries without the death penalty reported no more serious disciplinary problems than the countries which had retained the death penalty, an important observation because one might be tempted to assume that those executed in the latter countries might have been the ones that would have been the most difficult prisoners to deal with. Their counterparts who were given life terms in the countries without capital punishment evidently behaved no worse than the rest.

Scotland, Northern Ireland and Ireland reported more specifically that bad conduct was less frequent in this class of convicts. In Scotland, the unanimous opinion of governors and officers of long service was that these prisoners as a rule ranked with the most orderly and well-balanced prisoners and that incidents connected with them were much less than average. Ireland pointed out that they were in general amenable to prison rules, were better behaved than prisoners serving short sentences and that there was no record of violence on their part. Northern Ireland stressed that reprieved murderers were generally first offenders and must by experience be classified as well-conducted convicts. The director of the Philadelphia prison mentioned called these prisoners generally model prisoners. Finland noted that they were more difficult to handle in the beginning and attempted to escape more often but that after some time they became more adaptable and easy to manage because they realized that their behaviour would be taken into account later when they could apply for a pardon.

The reply from Belgium was even more specific. With respect to violent assault the rare cases since 1933 justified the observation that they were always the deeds of mentally ill or unbalanced prisoners. Those sentenced to death and given commuted life sentences (standard practice in Belgium) distinguished

⁹ Manuscript partly published under the title "How long is a life sentence for murder?" in the Proceedings of the 69th Annual Congress of the American Prison Association, 1939, pp. 513-524. For data of a similar nature secured from Commonwealth countries and Europe, see appendix 16 of Report of Royal Commission on Capital Punishment.

themselves only in so far as that category contained a higher proportion of mental cases (30 per cent of those originally sentenced to death were suspected of mental disorders as compared with 20 per cent of those originally sentenced to life). Suicides or attempts thereat had become exceedingly rare due to special preventive measures and no escape had occurred because of strict supervision. Generally speaking, disciplinary violations were no more frequent among this category of prisoners.

England and Wales listed 3 suicides among 202 reprieved prisoners. Denmark reported that among its 21 lifers, there had been two assaults on staff members (by the same prisoner), one suicide and four attempts (one prisoner twice), one escape (recaptured a few days later) and one attempted escape. No appreciable differences could be found between lifers and others either in these respects or regarding breaches of discipline. Sweden reported that among 32 lifers studied none had been guilty of assaults or disciplinary violations; one had committed suicide.

There is, of course, no doubt that prisoners who are not executed but instead sentenced to imprisonment should be expected to have their share of difficulties in conduct during their incarceration, but statements by prison authorities indicate that murders in prison are generally committed by prisoners of other classes.

What of the conduct of these who, having been originally sent to prison for a capital crime and are later paroled, licensed or pardoned? The questionnaire to which reference has been made also requested information on this point. England and Wales reported that of 112 reprieved murderers released during the 20 years of 1928-1948, five were subsequently and during this period convicted of serious offenses; one of these five was convicted of a second murder and executed. This was the only case of a second murder reported in the replies. Scotland reported that of 10 convicts released on license one had been recommitted for a new crime. Ireland stated that of 32 released convicts one had been returned for violating the conditions of his release; none of them was known to have committed a new offense. Of 10 convicts released in New Jersey none had been returned to prison and of 36 in Pennsylvania, one had been returned for violating parole and 3 for new crimes, none of them murder. Of 72 Belgian convicts released, 3 committed new crimes; one was sentenced for a serious offense to life imprisonment after having been in liberty four years. He was recognized as mentally ill after his second term began; the remaining two were sentenced for theft. Northern Ireland stated that no released murderer had returned to prison and that the few heard of from time to time were law-abiding citizens. Finland reported that of 84 released prisoners, information was available about 77, of whom 51 were still under supervision, 2 had died, and eight been re-convicted of some offense. Of 28 released prisoners, Norway stated that five had been re-convicted within five years after release; one of them twice. Within ten years, one was sentenced again. All but one of the new crimes involved thefts. Switzerland stated that while no statistics were available recidivism by life prisoners were rare: only one case, involving a trifling offense, was known.

In reply to a question asking what statistics showed with regard to the recidivist rate of released murderers compared with other offenders, the following statements were made.

England and Wales. "Indications are that reprieved murderers are less liable to commit further crimes than are other categories of convicted persons."

Scotland. "The number of persons convicted of murder who after release commit further offenses is very small and bears very favorable comparison with other categories of prisoners."

Austria. "The penitentiary of Graz finds that recidivism in this category is much inferior to that in other categories; it knows only of two cases."

Belgium. "Recidivism in this category is very small and extremely rare with regard to subsequent felonies. This is explained by the fact that a good number of convicts formerly condemned to death are freed only after the average age of criminality (half of them are more than fifty years old). Moreover the conditions of social rehabilitation and reformation are more strictly demanded in regard to these prisoners."

Norway. "The group investigated is so small that no definite conclusion can be drawn with regard to the probability of new crimes. It may, however, be said that the probability of relapse to the same or related crime is very small indeed."

Sweden. "None of the released 32 life prisoners has relapsed."¹⁰

For an article in the Annals volume to which reference has been made the director of parole in Pennsylvania (which has retained the death penalty for murder), Dr. G. I. Giardini secured data from twenty states covering capital offenders released on parole during a period that varied from 10 years in one state to between 20 and 38 years in the others. The total of 195 prisoners reported did not include those pardoned or who left the institutions of these states alive but by other forms of release than parole. Furthermore, it is likely that the information supplied on the 195 is not complete. During the periods of time covered 11 of these prisoners had been returned to prison for new offenses and 7 for parole violations; 5 had disappeared, 11 had died, 34 had completed parole and 127 were still on parole. Taking Pennsylvania data, the accuracy of which Dr. Giardini believed to be reliable, 36 paroles in capital cases had been given between 1914 and 1952. Of these 3 had been returned with sentences for new crimes and one for parole violation; one had absconded, 7 had died, 7 had completed their parole satisfactorily and 17 were still on parole on March 31, 1952. These are very favorable figures and there is no good reason to suspect that the post-release conduct of those given pardons, released by court order or released by the expiration of their sentences would have any worse record.

It is a well-known fact that the incidence of recidivism is high for crimes against property and considerably lower for offenses against the person, including sex offenses. It is our policy nevertheless to sentence thieves of all kinds for relatively short terms. We release on parole all but a small proportion of prisoners from our penitentiaries, taking the risk that they will again commit crimes, a risk that increases with every new sentence and subsequent parole. It appears from the data referred to above and similar data that the type of criminality which may again be engaged in by a person paroled after serving part of a sentence for murder is no worse than that which may be expected from other prisoners paroled; indeed the risk of later criminality by a released murderer appears to be very small. Judging from these facts and the manner in which capital offenders are released, it seems that imprisonment and parole offer adequate protection against whatever future damage to society such offenders might do. Such damages do occur but their seriousness should be weighed against the risk of errors of justice and other detrimental effects of the death penalty.

There are many other aspects of the death penalty that should be considered in any discussion of its validity, such as its effect on the administration of justice, but this statement has already tested the patience of its readers. Another aspect is the evident inequality with which the death penalty is applied, a circumstance which does not appear to have given concern to its advocates. Merely as an illustration we might point out that in England and Wales, if a man was tried for murder during the decade 1900-1909, his chance

¹⁰ Appendix 15 of the report of the Royal Commission on Capital Punishment gives a great deal of similar information.

of being sentenced to death was 58 per cent; in 1940-1949, this chance had dropped to 45·6 per cent. During the same periods, a women's chances of being so sentenced were respectively 12·5 and 13 per cent. Once having been sentenced to death, the risk of being executed was 60 out of 100 for men during 1900-1909, and 55·5 out of 100 during 1940-1949; the corresponding risks for women were 19 and 5·3 out of 100. No absolute standards of justice could account for these differences, especially when we consider the policy of reprieve. It would seem that there must be an assumption that women need not be deterred as much as do men or that women cannot be so easily deterred as men, or that women should not suffer retribution or make atonement as much as men or that justice does not require that a murderer pay with her life in the same proportion of cases. From whatever angle we view this phenomenon which is common in all death penalty countries and which has even led Guatemala, Honduras and El Salvador to exempt women completely from the death penalty, we must conclude that it raises a serious issue.

In my memorandum prepared for the Royal Commission on Capital Punishment, I concluded with the following statement:

The question of whether the death penalty is to be dropped, retained or instituted is not dependent on the evidence as to its utilitarian effects, but on the strength of popular beliefs and sentiments not easily influenced by such evidence. These beliefs and sentiments have their roots in a people's culture. They are conditioned by a multitude of factors, such as the character of social institutions, social, political and economic ideas, etc. If at a given time such beliefs and sentiments become so oriented that they favor the abolition of the death penalty, facts like those presented in this paper will be acceptable as evidence, but are likely to be as quickly ignored if social changes provoke resurgence of the old sentiments. When a people no longer likes the death penalty for murderers it will be removed no matter what may happen to the homicide rates. This is what has happened in the past in connection with crimes against property.

The same thought was expressed by Professor Ferdinand Kadecka in a report to the International Penal and Penitentiary Commission in 1936. Commenting on the murders in Austria during 1924-1934 he observed that the data would furnish arguments both to the opponents and the proponents of the death penalty and that neither would convince the other. "This", he said, "is because the question of the death penalty is not—or at least is not yet—a question of experience but a question of personal conviction, sentiment and faith."

DIAGRAM I. Maine, New Hampshire and Vermont: Homicide Death Rates, 1920-1948, per 100,000 population; and Executions, (figures at points on graph), 1930-1948.

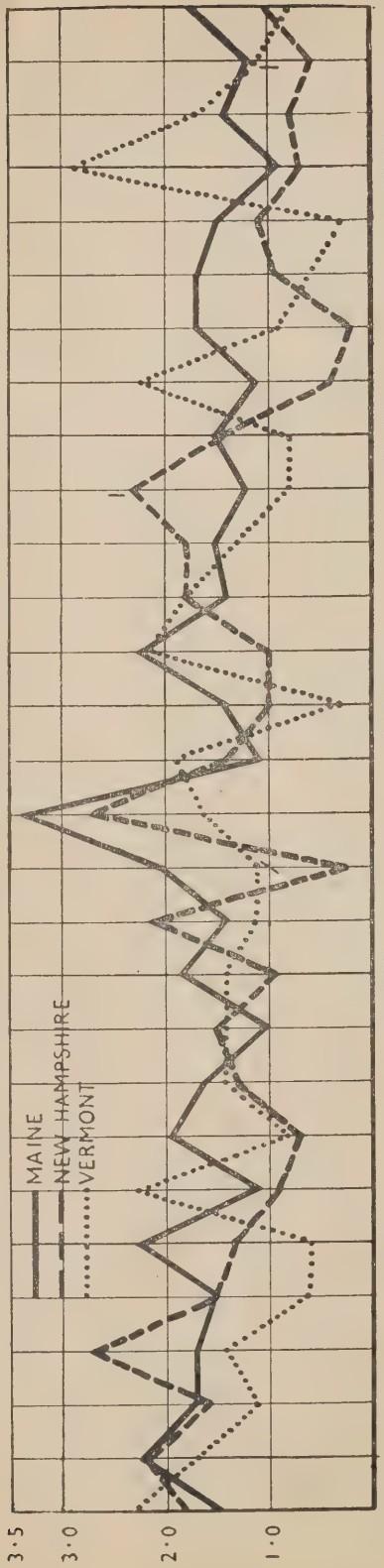


DIAGRAM II. Rhode Island, Massachusetts and Connecticut: Homicide Death rates, 1920-1948, per 100,000 population; and Executions, (Connecticut, 1926-1948; Massachusetts, 1920-1948)

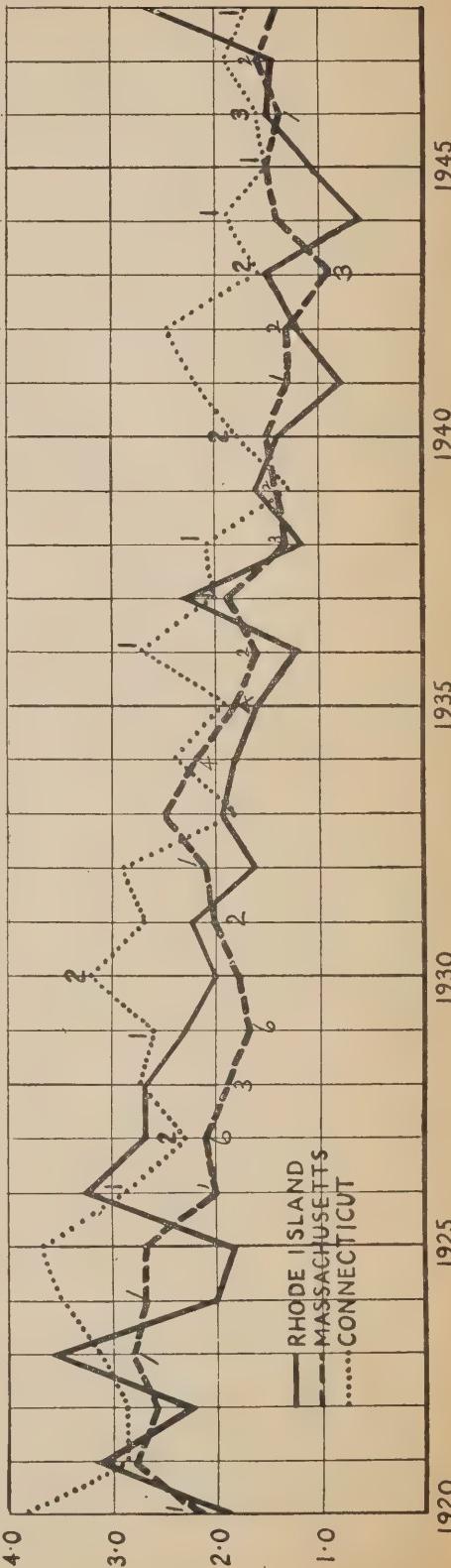
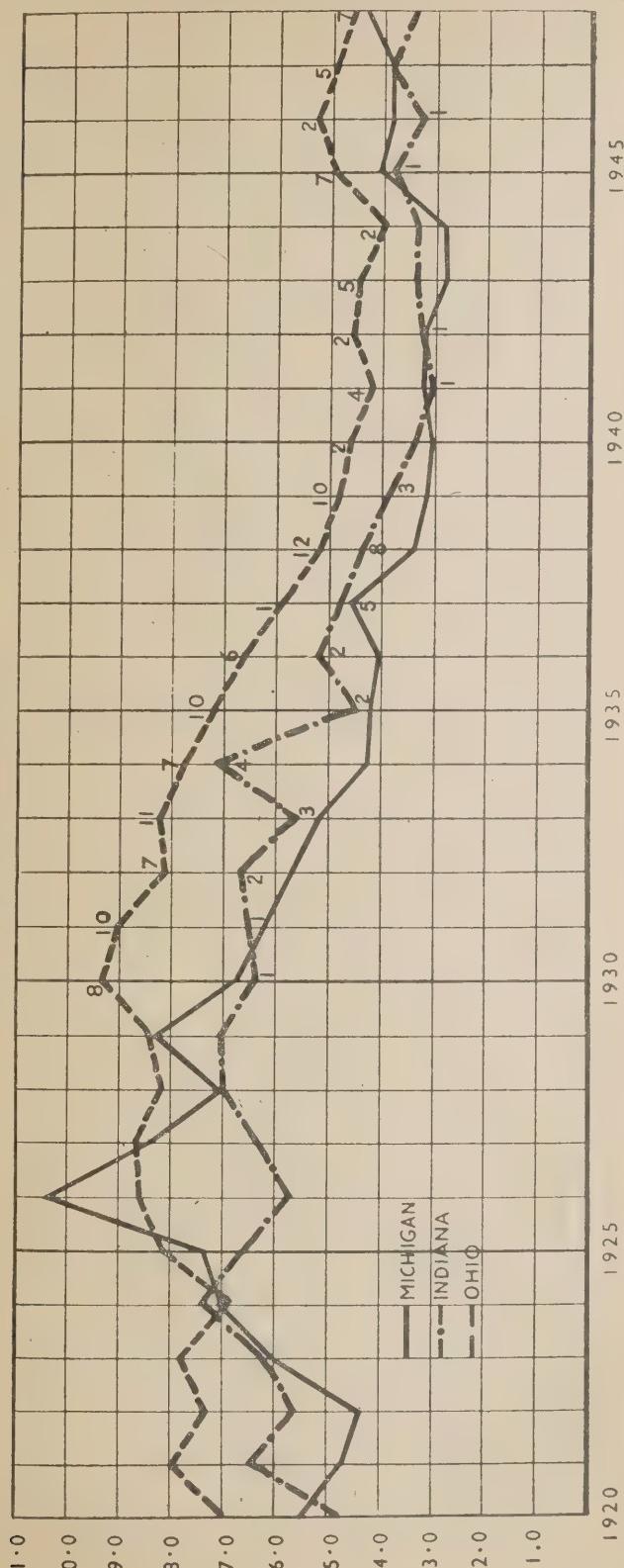


DIAGRAM III. Michigan, Indiana and Ohio: Homicide Death Rates, 1920-1948, per 100,000 population; and Executions, 1930-1948



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DIAGRAM IV. Minnesota, Iowa and Wisconsin; Homicide Death Rates, 1920-1948, per 100,000 population;
and Executions, 1930-1948

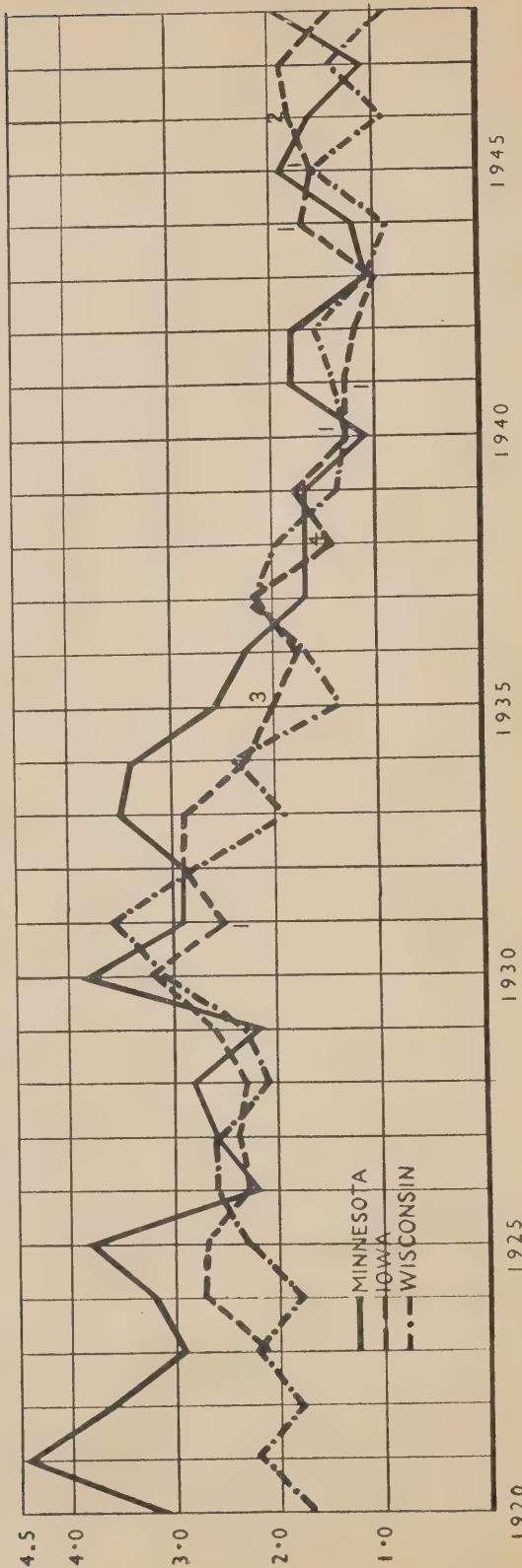


DIAGRAM V. North Dakota, South Dakota and Nebraska: Homicide Death Rates, 1920-1948, per 100,000 population; and Executions (Nebraska, 1930-1948; South Dakota, 1939-1948)

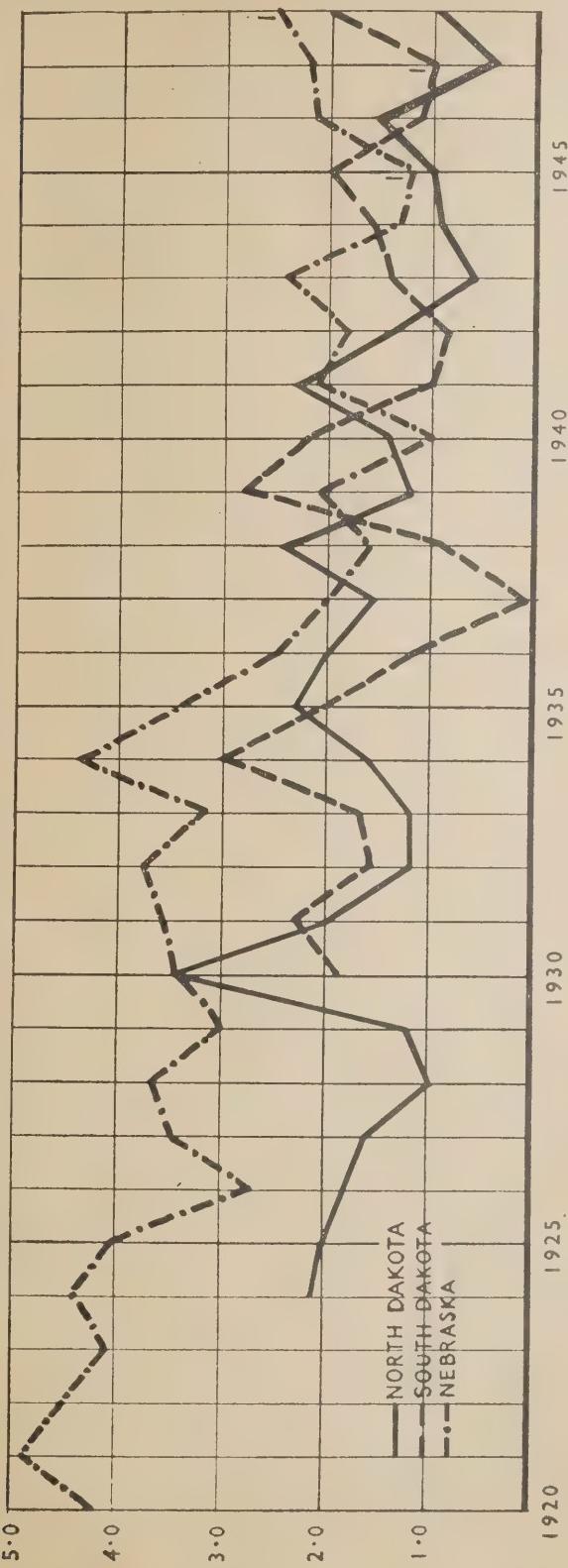


DIAGRAM VI. Colorado, Missouri and Kansas: Homicide Death Rates, 1920-1948, per 100,000 population; and Executions, 1930-1948

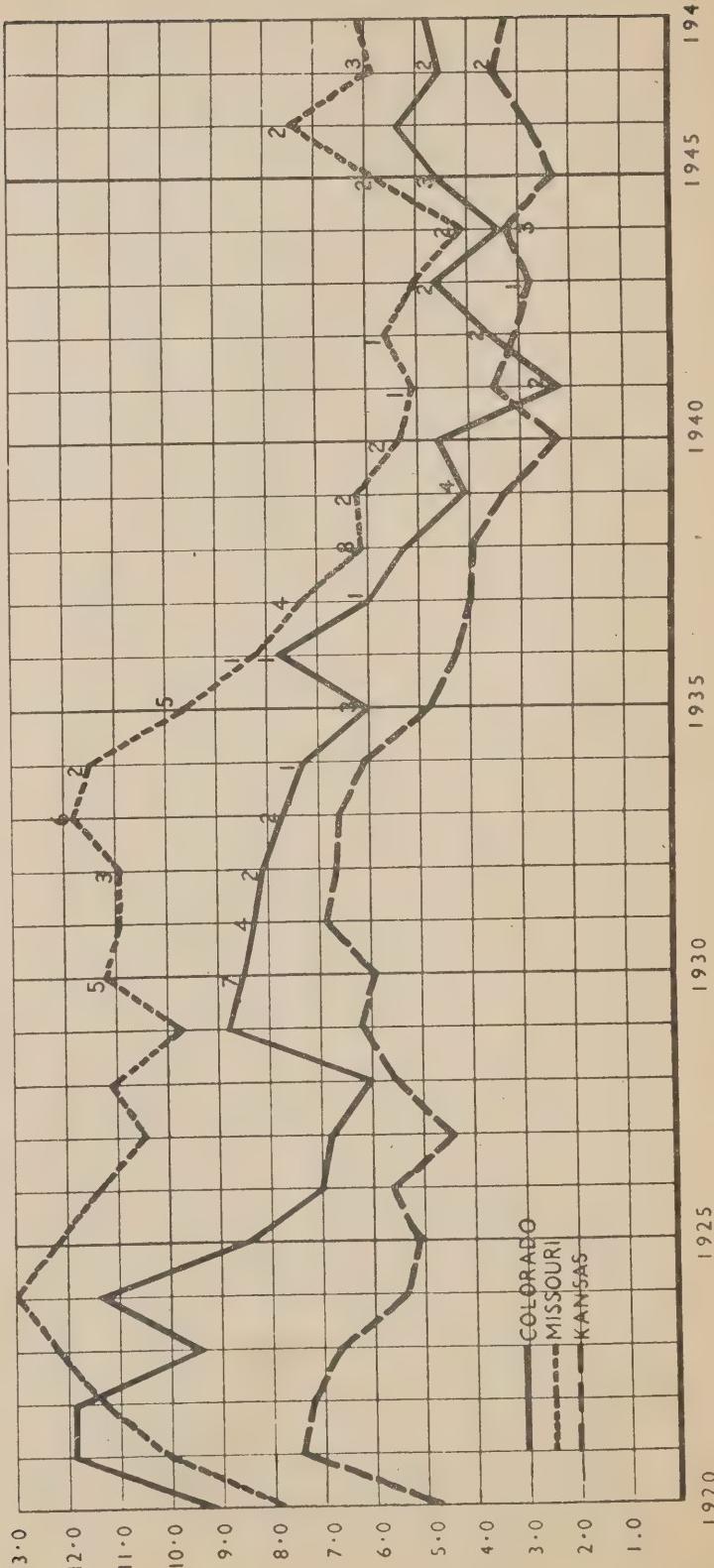


DIAGRAM VII. Florida, Georgia, Alabama, North Carolina: Homicide Death Rates, 1925-1948, per 100,000 population; and Executions, 1930-1948, All Crimes

